

1 DEPARTMENT OF LABOR AND INDUSTRIES

2 STATE OF WASHINGTON

3
4
5
6 ELECTRICAL BOARD MEETING

7
8 TRANSCRIPT OF PROCEEDINGS

9
10 Thursday, October 30, 2014

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13
14 BE IT REMEMBERED, that an Electrical Board meeting
15 was held at 9:00 a.m. on Thursday, October 30, 2014, at
16 the address of the Department of Labor and Industries,
17 949 Market Street, Tacoma, Washington before CHAIRPERSON
18 TRACY PREZEAU, BOARD MEMBERS ALICE PHILLIPS (Vice Chair),
19 MIKE NORD, DAVID CORNWALL, JOHN BRICKEY, ROD BELISLE,
DAVID WARD, DOMINIC BURKE, KEVIN SCHMIDT, DENNIS TOWNSEND,
BOBBY GRAY, DON BAKER, DYLAN CUNNINGHAM, RANDY SCOTT and
SECRETARY/CHIEF ELECTRICAL INSPECTOR STEVEN THORNTON.
Also present was ASSISTANT ATTORNEY GENERAL PAM REULAND
representing the Board.

20 WHEREUPON, the following proceedings were held, to
wit:

21
22 Reported by:
Cheryl Smith, CCR, CVR-M
(License #3017

23
24 EXCEL COURT REPORTING
16022-17th Avenue Court East
Tacoma, WA 98445-3310
25 (253) 536-5824

Thursday, October 30, 2014
Tacoma, Washington

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CHAIRPERSON PREZEAU: So good morning. It is 9 a.m., and I would very much like to call the October 30, 2014, Electrical Board meeting to order. Good morning, everybody.

So we have some new Board members, three new Board members that have been seated -- four new Board members that have been seated today, so what I would very much like to do is go around the room and do introductions. And if you would, please, tell us, obviously, who you are, but what seat you occupy in the Electrical Board position that you have. And Dominic, can we begin with you, please.

BOARD MEMBER BURKE: Dominic Burke, Burke Electric, contractor's seat.

BOARD MEMBER SCHMIDT: Kevin Schmidt, Interface Technologies, telecommunication vendor seat.

CHAIRPERSON PREZEAU: Excellent. Welcome.

BOARD MEMBER GRAY: Bobby Gray. I'm the administrator for Hoydar Buck Electric in Selah, Washington, hometown of our Governor. And I represent the contractors on the eastern side that NECA sponsors.

CHAIRPERSON PREZEAU: Welcome.

BOARD MEMBER TOWNSEND: Good morning. I'm Dennis

1 Townsend. I am an engineer with CenturyLink. I represent
2 the telecom industry.

3 BOARD MEMBER WARD: Good morning. I'm Dave Ward. I
4 represent the utility seat.

5 CHAIRPERSON PREZEAU: Excellent. Welcome, Dave.

6 BOARD MEMBER: Don Baker, contractor seat.

7 BOARD MEMBER CUNNINGHAM: Dylan Cunningham, MW
8 Consulting Engineers representing the engineering
9 community.

10 BOARD MEMBER NORD: Mike Nord, telecommunications.

11 CHAIRPERSON PREZEAU: And it's probably not advisable
12 to start a meeting without your attorney next to you, but
13 Pam Reuland, who normally occupies this seat who is our
14 assistant attorney general, ran to her car to get some
15 additional documents.

16 My name is Tracy Prezeau. I am an electrician. I
17 occupy the electrician's seat, and I'm also the Chair of
18 the Board.

19 BOARD MEMBER PHILLIPS: Alice Phillips. I have the
20 outside line seat and Board member.

21 CHAIRPERSON PREZEAU: It's going to be a good day.

22 BOARD MEMBER CORNWALL: Dave Cornwall. I've got the
23 manufacturer's seat.

24 BOARD MEMBER SCOTT: Randy Scott, and I'm a public
25 member.

1 BOARD MEMBER BRICKEY: John Brickey. I'm with the
2 City of Longview representing city jurisdictions that have
3 electrical programs, and I'm a nonvoting member.

4 BOARD MEMBER BELISLE: Rod Belisle with NECA IBEW
5 training center, and I'm an electrician.

6 SECRETARY THORNTON: Steve Thornton. I'm the new
7 electrical chief. I'm here for Labor and Industries.

8 CHAIRPERSON PREZEAU: Welcome, Steve.

9 SECRETARY THORNTON: Thank you. Glad to be here.

10 MS. ZYSKI: Elissa Zyski. I am the assistant to the
11 secretary seat.

12

13 Item 1. Approve transcripts from July 31, 2014,
14 Electrical Board Meeting

15

16 CHAIRPERSON PREZEAU: So Chair would love to
17 entertain a motion to approve the transcripts from the
18 July 31, 2014, meeting.

19

20 Motion

21

22 BOARD MEMBER CUNNINGHAM: Motion.

23 BOARD MEMBER SCOTT: Second.

24 CHAIRPERSON PREZEAU: So it's been moved and seconded
25 to approve the transcripts from the July 31, 2014,

1 Electrical Board meeting. All those in favor, signify by
2 saying "aye."

3 THE BOARD: Aye.

4 CHAIRPERSON PREZEAU: Opposed? Motion carried.
5 Brilliant.

6

7 Motion Carried

8

9 Item 2. Departmental/Legislative Update

10

11 CHAIRPERSON PREZEAU: So nothing like the hot seat
12 for the new chief. So you're second up on the agenda. If
13 you would, Steve, tell us what you know about departmental
14 legislative updates.

15 SECRETARY THORNTON: Right now we have hired a new
16 trainer to do some statewide training and take over those
17 duties. It's Dennis Straley. He's here in the back of
18 the room. He's our new trainer.

19 We had some positions that we haven't filled yet that
20 we're looking at filling here before too long, trying to
21 get them out in the field and take care of a little more
22 of our workload.

23 We have an update to mobile inspections that we're
24 getting ready to start working on, which is going to cost
25 a couple million dollars that we're going to use out of

1 our positive variance. We are going to put forward a
2 request for an allotment to pay for the rest of the
3 upgrade, and that's probably going to run another couple
4 million dollars, probably about \$4 million total.

5 CHAIRPERSON PREZEAU: Steve, do you have any idea how
6 long -- assuming the allotments are approved, do you have
7 any concept of how long it would take to transition over
8 to the new system?

9 SECRETARY THORNTON: Nothing other than an educated
10 guess, and two to four years would be my guess. And if I
11 don't know the answer to something, I'll certainly be
12 happy to get the answer for you.

13 CHAIRPERSON PREZEAU: Well, it's pretty hard to
14 answer because we don't have the system yet, but I just
15 want to get an -- what's the idea you have in your head on
16 expectations?

17 SECRETARY THORNTON: Yeah. We don't get things done
18 very quickly as far as that goes when that kind of stuff
19 comes around.

20 And that's all I've got for legislative updates.

21 CHAIRPERSON PREZEAU: Any questions for our new chief
22 electrical inspector?

23 SECRETARY THORNTON: I might give everybody a little
24 update or a little bit of my background. I've been with
25 Labor and Industries for 20 years. I was an electrical

1 supervisor down in Vancouver for 17. I was an inspector
2 before that. Before I came here, I was a journeyman
3 electrician for 20 years and a general contractor for 15,
4 and been in the construction trade for a long time.

5 CHAIRPERSON PREZEAU: Well, we're very happy to have
6 you here.

7 SECRETARY THORNTON: I'm glad to be here.

8 CHAIRPERSON PREZEAU: Thank you.

9 All right. Any questions for Steve? All right.
10 Wow. Taking them up and putting them down, these agenda
11 items.

12

13 3. Appeals

14

15 Items 3.b., c., d., f. James Billesbach, Sullivan Heating
16 & Cooling, Inc., Miller's One Hour Heating and David
17 Adams, Chong's Construction

18

19 CHAIRPERSON PREZEAU: So the third agenda item, as
20 you guys can see, has to do with appeals, and it has
21 multiple components to it. And as you can see, we do have
22 one active appeal that we are going to hear today but
23 wanted to give you an update on some of the other appeals
24 that are listed A through J on your Agenda Item 3.

25 So as you can see, the James Billesbach, that

1 continued to January, so we're not -- all parties have
2 agreed for the continuance. Additionally, the Sullivan
3 Heating & Cooling, Inc. has also been continued to the
4 January meeting as has the Miller's One Hour Heating and
5 David Adams. So lightens the agenda a little bit.

6 You can see 3.f., Chong's Construction, the appellant
7 actually withdrew. And then I am going to ask our
8 assistant attorney general Pam Reuland to talk about
9 agenda items 3.e., g. and h.

10

11 Item 3.e., g. and h. SeaTac Electric, Mirsky Electric and
12 Don Schlotfeldt

13

14 ASSISTANT ATTORNEY GENERAL REULAND: Good morning.
15 As you may have recalled, we had some discussions at other
16 meetings regarding untimely appeals, and we've been
17 sorting through that. I'm going to talk about that a
18 little bit later when we talk about the bylaws.

19 But in terms of Mirsky Electric and Don Schlotfeldt,
20 we had originally discussed giving the secretary the
21 authority to make a preliminary decision regarding
22 timeliness, but the appellant would retain the ability to
23 appeal that to the full Electrical Board because that's
24 sort of what the statute says. We started then to
25 implement that, and, if you recall, we discussed amending

1 the bylaws to include that provision consistent with what
2 had been done at a Board meeting back in 2003. Well, that
3 created a huge problem because then everybody was
4 requesting to appeal that decision to the Board, which
5 you'd have multiple hearings on timeliness issues.

6 So I worked with other attorneys in my office and we
7 did a little bit more research and consulting, and we
8 determined and it was my advice that the secretary of the
9 Board does not have the legal authority to make decisions
10 on timeliness as the secretary to the Board. And that was
11 a problem in Stanley Access, the case that went up into
12 Superior Court and got remanded to the Board, which sort
13 of started this whole process.

14 But what we did find out and what my advice was is
15 that in consulting with Nancy Kellogg, who is the attorney
16 for the Department also, is basically it is under the
17 Administrative Procedures Act the Department can determine
18 that a hearing -- not to actually grant a hearing. So the
19 process is going to be changing to where the Department
20 says, "I'm sorry. It's untimely," and then the appellant
21 still has appeal rights for that.

22 However, Don Schlotfeldt and Mr. Mirsky, we had given
23 them the right to appeal to the Electrical Board, which
24 they did do. That created a problem because then you'd be
25 looking here, making testimony, making a record. So Don

1 Schlotfeldt, the Department made a motion to remand it to
2 OAH, basically send it back to the Office of
3 Administrative Hearings to conduct a hearing on the
4 timeliness so then you have a record. And if they wanted
5 to appeal that, there's a record. Then they can appeal
6 that to Superior Court. There's evidence, so to speak.
7 And that was agreed to by the parties to do that remand.

8 The same thing with Mirsky Electric. Is Darrell
9 Mirsky here? Basically, the same request was made. I
10 spent several -- playing telephone tag with Mr. Mirsky.
11 We sent Mr. Mirsky a letter and said, "Hey, let us know if
12 you've had any response." I don't believe he filed any
13 written response ever objecting to remanding it. But he's
14 not losing anything. Basically, what's happening is this
15 is a procedural matter and the Chair can rule on those
16 issues. We're giving him his day in court. We're just
17 giving it back to OAH so the hearings officer can conduct
18 the hearing and do what the hearing officer does. So
19 that's what happened to those two.

20 In terms of SeaTac Electric, there was -- the
21 appellant failed to show up for a pretrial conference,
22 it's just a scheduling conference, and the ALJ dismissed
23 it. So the problem, of course, in that case was they had
24 appealed it to the Electrical Board. And under the
25 Administrative Procedures Act, you guys can't take new

1 evidence. But part of the appeal was the reason why they
2 didn't show up, which is technically new evidence. So
3 this creates a procedural problem.

4 There is a provision, however, in Superior Court that
5 a party can move for additional evidence once it gets to
6 Superior Court and have that considered. So I talked to
7 both of the attorneys and said, "Hey, can you work out
8 some agreement?" Go to Superior Court and they can come
9 back, and that's a waste of time.

10 So the parties then agreed to present the Chair with
11 an agreed order to remand it back to the Office of
12 Administrative Hearings to, again, conduct a hearing on
13 why they didn't show up, basically to take evidence.

14 So I know that's a long explanation for pretty simple
15 stuff.

16 CHAIRPERSON PREZEAU: The long and the short of it is
17 when cases come before us, I think that our expertise is
18 the industry and not so much lawful standards on
19 timeliness and statute of limitations and those types of
20 things, and that other one, SeaTac, without having the
21 ability to bring new evidence. Then the parties would
22 come in and say, you know, "We weren't there."

23 "Well, you can't tell us why you weren't there."

24 So it seemed like the common sense idea was let's
25 send this back to the arena that seems most appropriate

1 and expedient and less costly to all parties. And then
2 they still have access to judicial review. And then in
3 the event that it gets appealed on the merits, then let's
4 come here and let's talk about -- let's talk in front of
5 subject matter experts about the industry. So if feels
6 like we're figuring out how to fix the problem, right?

7 ASSISTANT ATTORNEY GENERAL REULAND: There are fixes.

8 CHAIRPERSON PREZEAU: Yeah. So I just wanted to make
9 sure the Board members -- and hopefully, I'm looking
10 around the room and it appears to me that there is a high
11 level, if not universal, agreement in the decisions that
12 we made in the interim, so I'm happy to see that.

13

14 3.i. and 3.j. Burriss Electric and Legacy
15 Telecommunications

16

17 CHAIRPERSON PREZEAU: And so also would like to now
18 look at Agenda Items 3.i. and j. because they will be, I
19 believe, handled fairly quickly and expediently. It has
20 to do with presentment of final orders. So if we could --
21 do we have representatives from Burriss Electric and the
22 Department in the matter of Agenda Item 3.i.?

23 ASSISTANT ATTORNEY GENERAL REULAND: They are not
24 going to be here. I talked to both of them. They did
25 work out an agreed order which I have reviewed and is

1 consistent with the Board's rulings.

2 CHAIRPERSON PREZEAU: So, Mr. Madison, right?

3 ASSISTANT ATTORNEY GENERAL MADISON: That's right,
4 Madam Chair.

5 And for the record, Zeb Madison, assistant attorney
6 general, here on behalf of the Department. I was the
7 attorney of record in the Legacy matter that's listed as
8 agenda 3.j.

9 I would echo Ms. Reuland's comments. It's my
10 understanding that my colleague, Attorney General Greer,
11 has come to some kind of agreement. They've fashioned an
12 order. I don't know if that's been prepared and forwarded
13 on for presentment to the Board at this time, but I do
14 know it's been agreed upon.

15 CHAIRPERSON PREZEAU: It looks like it because
16 Ms. Greer and Mr. Salazar, who's the attorney of record
17 for Burriss Electric, LLC, have both signed it.

18 ASSISTANT ATTORNEY GENERAL MADISON: Very good.

19 CHAIRPERSON PREZEAU: And you have reviewed it?

20 ASSISTANT ATTORNEY GENERAL REULAND: Uh-huh. Yes.

21 CHAIRPERSON PREZEAU: That's why I want to sort of
22 get these off the agenda because it's going to happen
23 fairly quickly. What do you want me to do?

24 ASSISTANT ATTORNEY GENERAL REULAND: Date it.

25 CHAIRPERSON PREZEAU: With the correct date, not

1 September 30, right? Beautiful. Great.

2 And then, Mr. Madison, are you also -- we're going to
3 talk about Legacy Telecommunications.

4 ASSISTANT ATTORNEY GENERAL MADISON: We are, Your
5 Honor.

6 This matter, I believe, most of you were present for
7 the July meeting. For those who weren't, this matter came
8 before the Board as an appeal both from the Department as
9 well as representatives from Legacy Telecommunications.
10 It was an argument that involved a statute of limitations,
11 tolling, things of that nature.

12 And with all due respect, Madam Chair, I take issue
13 with your prior comment. I do think this Board has
14 exercised pretty good judgment when it comes to whether
15 statutes of limitations apply and things of that nature.

16 The Board, after hearing the merits of the argument,
17 reviewing the record, ruled in favor of the Department.
18 At this time, I put together an order. I have an original
19 that I will submit to Madam Chair as well as copies for
20 each Board member, and I believe it accurately reflects
21 the judgment that was made by this Board in this case.

22 I went through the transcript. There were a number
23 of amendments made to different subsections that were
24 contained within the order that was on appeal. Again, I
25 believe my order accurately reflects those changes.

1 I've reached out to Legacy's attorney, Mr. Ehlke, and
2 asked that he review this document and whether or not he
3 can agree to it. I heard back from Mr. Ehlke yesterday,
4 and he indicated to me that he's got a number of family
5 matters going on. He had a couple of deaths in the family
6 and his son is ill in Miami which has caused him to travel
7 out of state. So he has not agreed to this order. He has
8 not signed off on it. So I'm submitting it to the Board
9 as a proposed order.

10 Mr. Ehlke asked that we move the presentation of this
11 order, the entry of the judgment, to the next Board
12 meeting in January. I explained to him that, as a
13 professional courtesy, I'm okay with that, and I don't
14 believe that my client is prejudiced at all by that
15 three-month delay.

16 So with that, I'd like to present the orders to the
17 Board. If the Board chooses to enter it today, that's
18 within the Board's discretion. If you choose to hold off
19 and enter it in January, again, I have no objection to
20 that course of action either.

21 So with that, I will present the order, unless the
22 Board has any questions of me.

23 CHAIRPERSON PREZEAU: Any questions for Mr. Madison?

24 So certainly, this -- you know, I believe that this
25 Body is interested in timeliness, you know, being

1 efficient and certainly resolving matters in a timely
2 fashion. It does seem to me -- my thought is to extend
3 the professional courtesy to Mr. Ehlke, give an
4 opportunity to review the proposed order. As for the
5 Board members that were here during that session, there
6 were a lot of amendments. I'm not sure if, Pam, you've
7 even had an opportunity to review the order. And so I
8 would very much like it if the Board members could receive
9 the proposed order, including our attorney, and we'll
10 schedule it for the January meeting for final presentment.
11 Does that seem reasonable for everybody?

12

13 Motion

14

15 CHAIRPERSON PREZEAU: Do I need a motion on that,
16 Pam?

17 BOARD MEMBER: So moved.

18 BOARD MEMBER PHILLIPS: Second.

19 CHAIRPERSON PREZEAU: So it's been moved and seconded
20 to continue the decision on final -- on the proposed order
21 in the matter of Legacy Telecommunications until the
22 January meeting. All those in favor, signify by saying
23 "aye."

24 THE BOARD: Aye.

25 CHAIRPERSON PREZEAU: Opposed? Motion carried. Very

1 good. Thank you, Mr. Madison.

2

3

Motion Carried

4

5 ASSISTANT ATTORNEY GENERAL MADISON: Thank you, Madam
6 Chair.

7

8

Item 3.a. Earthwise Excavation

9

10 CHAIRPERSON PREZEAU: So, I believe, if I'm doing my
11 math correctly, we have gone through all of the appeals
12 except the one that we're going to hear on the merits, and
13 that is 3.a., Earthwise Excavation. And so I would very
14 much like the parties that are involved in that appeal, if
15 you would, please, come up and join us at the front of the
16 room.

17 And I believe we have representatives from all
18 parties here. And if you would be kind enough, just --
19 I'm going to ask you to introduce yourself and spell your
20 name for our court reporter, and then I am going to read a
21 statement outlining the proceedings this morning.

22 So, Ms. Mahoney, if we can begin with you, please.

23 MS. CLARK-MAHONEY: Charlotte Clark-Mahoney,
24 assistant attorney general, representing the Department of
25 Labor and Industries. My first name is C-H-A-R-L-O-T-T-E,

1 my last name is Clark-Mahoney, C-L-A-R-K hyphen
2 M-A-H-O-N-E-Y. And I am the appellant -- or the
3 Department is the appellant.

4 CHAIRPERSON PREZEAU: Thank you.

5 MR. HAUSMANN: Good morning, members of the Board.
6 My name is Karl Hausmann. I'm an attorney representing
7 Earthwise Excavation. With me is Albert Postema, the
8 owner-operator of Earthwise Excavation. We are the
9 respondents. My name is spelled K-A-R-L. Hausmann is
10 H-A-U-S-M-A-N-N.

11 And, Albert, I'll let you go ahead and spell your
12 name.

13 MR. POSTEMA: Albert Postema. A-L-B-E-R-T,
14 P-O-S-T-E-M-A.

15 CHAIRPERSON PREZEAU: Thank you. Very good.

16 Good morning. My name is Tracy Prezeau. I am the
17 Chair of the Electrical Board. The matter before us today
18 is an appeal in the matter of Earthwise Excavation, Docket
19 No. 2013-LI-0217.

20 This hearing is being held pursuant to due and proper
21 notice to all interested parties in Tacoma, Washington on
22 October 30, 2014, at approximately 9:25 a.m.

23 This is an appeal from a proposed decision and order
24 issued by the Office of Administrative Hearings on
25 March 25, 2014. It is my understanding that the decision

1 reversed the citation and notices EBANX00315, 00316, 00317
2 issued by the Department of Labor and Industries on
3 July 18, 2013. It is further my understanding that the
4 Department, who is the appellant, has timely appealed that
5 decision to the Electrical Board.

6 At this time we recognize that the appellant, through
7 the AAG, assistant attorney general's office, is present.
8 Counsel has introduced themselves. And the respondents
9 are also present with counsel, who have identified
10 themselves as well.

11 All right. So the Electrical Board is the legal body
12 authorized by the legislature to not only advise the
13 Department regarding the electrical program, but to hear
14 appeals when the Department issues citations or takes some
15 other adverse action regarding an electrical license or
16 certification. The Electrical Board is a completely
17 separate entity from the Department, and as such, will
18 independently review the action taken by the Department.

19 When the Department issues penalties, the hearing is
20 assigned to the Office of Administrative Hearings to
21 conduct the hearing pursuant to the Administrative
22 Procedures Act. The ALJ who conducts that hearing then
23 issues a proposed decision and order. If either party
24 appeals, that decision is subject to review by the
25 Electrical Board.

1 Please keep in mind that while our review is de novo,
2 we sit in the same position as an ALJ and will review the
3 entire record regardless of whether a certain piece of
4 evidence is referenced by the ALJ. We are bound by the
5 evidence in the record, and no new evidence can be
6 submitted at this hearing.

7 Each party will be given approximately 15 minutes
8 today to argue the merits of the case. Any Board member
9 may ask questions and the time may be extended at the
10 discretion of the Board.

11 At the conclusion of the hearing, the Board will
12 determine if the findings and conclusions reached by the
13 ALJ are supported by the facts and the rules pertaining to
14 electrical installations, circuit alteration and passive
15 testing.

16 Any questions before we begin? Very good.

17 Board members, especially new Board members, I like
18 to make sure that people understand the rules of
19 engagement. I very much want to reiterate that you do
20 have the ability to ask questions, but will caution you if
21 you are -- the question you are asking will allow for the
22 introduction of new information, information that's not
23 contained within this document.

24 One more piece of sort of rules of engagement.

25 Mr. Hausmann, specifically since you are counsel for the

1 respondent, unless you defer questions to your client and
2 specifically -- or unless Board members specifically ask
3 questions directly of your client, I'm going to assume --
4 give you all your professional courtesy and direct
5 conversation directly to you as counsel.

6 MR. HAUSMANN: Thank you.

7 CHAIRPERSON PREZEAU: Thank you.

8 So the Department, you are the appealing body, so you
9 have the burden of proof and therefore the opportunity to
10 present your case first. So if you would, please.

11 MS. CLARK-MAHONEY: Thank you, Madam Chair, Board
12 members.

13 The Department appeals the erroneous decision of the
14 administrative law judge because she based her decision on
15 unsupported hearsay and, frankly, lacking an understanding
16 of the electrical code as required. She -- the evidence
17 that was presented at the hearing was that Inspector Banks
18 arrived, intending to perform an inspection. He had been
19 called for an inspection by Rod's Electric, a very
20 ordinary event. When he arrived, he observed and saw
21 Mr. Mendez-Mata over the open electrical box, and coming
22 out of it were bare wires plugged into an extension cord
23 leading to the apparatus for the septic tank.

24 When Inspector Banks saw this, he inquired and asked
25 if Mr. Mendez-Mata was working on this. And he said yes,

1 or indicated that he was so, and when asked if he was a
2 licensed electrician, he said no.

3 Inspector Banks went back to his car to get the
4 materials for doing an inspection because he -- since he
5 had -- I mean to do the compliance inspection. He had
6 arrived to do just a standard electrical inspection, and
7 so this was kind of a surprise for him to come upon a
8 person who was actually working on the item he was
9 supposed to be inspecting. Went back to get his camera
10 and his materials.

11 When he came back, Mr. Mendez-Mata was -- or he
12 observed that there was -- the wires had been put back
13 into the box and it was not in a manner that he is
14 familiar with for electricians to install and connect
15 wires. And from that, he concluded that Mr. Mendez-Mata
16 had performed the work, the electrical work.

17 There was no electrical work permit called by
18 Earthwise. There was -- he was not an electrician. None
19 of these items are disputed. But there was no electrical
20 work permit. And Mr. Mendez-Mata was not licensed,
21 Earthwise was not properly licensed, now -- and
22 Mr. Mendez-Mata was an employee of Earthwise at the time
23 that he was doing the work.

24 The judge's decision, as indicated in the findings of
25 fact and conclusions of law, indicate that she based her

1 -- I should say she based her decision on the testimony of
2 Mr. Postema regarding what he heard, essentially. He
3 testified that he had called for Rod's Electric to come
4 and set up the device, that he had -- that Mr. Mendez-Mata
5 was frightened of Inspector Banks at the time, that he
6 doesn't speak English well enough to communicate clearly,
7 and that based on -- and then she also based it on an
8 insufficient understanding of the electrical code saying
9 that the small amount of electrical work that he did
10 wasn't sufficient to contribute to count as electric work.

11 So based on that, I would like to point out to you
12 the actual evidence upon which the decision should have
13 been made, that you can make this decision on and that is
14 supported by the record, and that is that Inspector Banks
15 observed Mr. Mendez-Mata at the box with the box open. He
16 testified that there was no electrician around. Nobody
17 from Rod's Electric approached him. He didn't see anyone,
18 he did observe -- it appeared from the record that sort of
19 in just in the (inaudible) or outside that there were some
20 drywallers doing some work, that there was nobody else
21 there at the scene of this open box to have done anything
22 except Mr. Mendez-Mata.

23 When he came back, which was a very short period of
24 time, the work had been done, the wires had been
25 terminated and reassembled in the box, and there was also

1 no one else around.

2 The reason I point this out is this is the
3 circumstantial evidence upon which an adjudicative body
4 can make a decision. The circumstantial evidence is
5 actually real evidence, in other words, you have to be
6 able to draw conclusions from it.

7 The evidence that -- so the circumstantial evidence
8 supported the hearsay evidence offered by the Department
9 and by Inspector Banks that Mr. Mendez-Mata had been
10 working on the box. The testimony of Mr. Postema,
11 however, was not supported by any circumstantial evidence
12 or any direct evidence. All of his evidence was straight
13 hearsay: that he had spoken with Mr. Mendez-Mata and
14 received from him the indication that he was frightened,
15 that he had called Rod's Electric who had done the work.
16 However, Rod's Electric was not there, Mr. Mendez-Mata was
17 not there, and so there was no circumstantial evidence
18 that supports the testimony. And actually, in fact, the
19 circumstantial evidence of Inspector Banks' observations
20 supports that they were not there.

21 Additionally, the testimony of Mr. Postema supports
22 the citations in that he testified that he actually did
23 believe that the conduct described by Inspector Banks was
24 an appropriate conduct for an employee of his, that is, to
25 open the box and pull the wires out in order to test the

1 septic tank. He indicated that it was a burden to have to
2 wait for an electrician if they weren't there in order to
3 get the testing done, important business, and that he
4 would not -- apparently, he did not frown upon this
5 conduct. That is evidence that supports the citation
6 indicating that Earthwise hired a person for the purpose
7 to do electrical work who was not licensed.

8 Even without that, however, though, the argument that
9 -- the law is not written so that there has to be an
10 actual intent at the time of hiring an individual to work
11 that I'm going to hire this person to do unlicensed
12 electrical work. Even though the language has
13 implications because it says "for the purpose of," but, in
14 fact, in this case, Mr. Postema testified that he knew the
15 requirements of the electrical code, he was familiar with
16 them, he knew that they weren't supposed to do them, do
17 electrical installations and that -- but that he was not
18 surprised or does not particularly frown upon the conduct
19 that was observed. But even if so, it's the purposes of
20 doing the work for the business, not specifically
21 electrical work, and if they do electrical work, it still
22 complies with the statute. In other words, it's not an
23 intent to -- there actually is no intent element in any of
24 the statutes.

25 So it's the Department's position that the

1 administrative law judge was mistaken in the standards to
2 be applied and the evidence to be considered when she
3 reached her conclusions as she -- and her decision plainly
4 disregarded the direct evidence testimony of Inspector
5 Banks and the circumstantial evidence and relied on the
6 hearsay evidence offered by Mr. Postema. I would urge
7 that the citation should be affirmed based on a
8 preponderance of evidence that was presented at the
9 hearing, and, therefore, there's a preponderance of
10 evidence here today for you to reverse the Board's
11 decision.

12 The Department petitioned for review of all the
13 findings in fact that apply to the citations and to the
14 conclusions of law that applies to them. It erroneously
15 named the conclusion of law relating to an appeal -- it's
16 Conclusion of Law 15 we should not have listed as being
17 appealed. However, the Department's position is the
18 evidence supports that all three citations should be
19 affirmed, and if you do affirm them, I will prepare
20 findings of fact and conclusions of law for submission at
21 the next meeting.

22 CHAIRPERSON PREZEAU: Thank you, Ms. Clark-Mahoney.
23 Okay. Mr. Hausmann, please, if you will.

24 MR. HAUSMANN: Good morning.

25 The Department has asked you to review a proposed

1 decision of the administrative law judge, and as such,
2 this Board has all of the decision-making authority that
3 that administrative law judge has. The only qualification
4 I put on that, Ms. Prezeau's statement of the law, is that
5 this Board is supposed to give due regard to the
6 administrative law judge's ability to observe the
7 witnesses and see how the witnesses testify. So you have
8 all that ability subject to deferring to the
9 administrative law judge and her ability to see the
10 witnesses and listen to the testimony, and also to
11 participate in the hearing itself.

12 The review -- your review starts with the citations
13 that were issued, and the question is, does that record
14 that was created in front of the administrative law judge,
15 does it support the citations that were issued by the
16 Department? I'll talk about each of those citations, but
17 before I talk about the citations individually, I want to
18 identify the bigger picture for this set of citations.

19 Our major arguments are that a permit was not
20 required for the work that Earthwise Enterprises undertook
21 to do. The second argument is that the Department
22 overcharged by issuing four citations for one event. And
23 the third argument is that what is really at issue here,
24 what really is the reason for the citations and the reason
25 for the appeal is the interpretation of the Washington

1 Administrative Code regarding testing and when may a
2 septic installer do testing versus when must an
3 electrician work on a circuit. And that's really what's
4 at issue in this case. That's what should have been
5 addressed. But instead, the Department issued four
6 citations for this one event.

7 Three of those citations were to Earthwise Excavation
8 and one was to Mr. Mendez-Mata. He did not perfect his
9 appeal, so really, what's at issue before you is the three
10 citations that have been first appealed by Earthwise
11 Excavation. They prevailed before the administrative law
12 judge in reversing those citations, and now the Department
13 has appealed to those this Body.

14 I want to emphasize back to our first argument. This
15 is not a situation where an unlicensed person or an
16 unlicensed contractor attempted to do electrical work
17 without hiring a licensed electrician or without obtaining
18 an electrical permit. It's not like some of the cases you
19 see where a contractor wires a house without a permit or
20 without hiring an electrician.

21 On the contrary, in this case, it was a large plat
22 out by Monroe in Snohomish County. Earthwise Excavation
23 was working as a subcontractor to a general contractor.
24 One of the other subcontractors was Rob's Electric, a
25 licensed electrician and the licensed party who pulled the

1 permit on this project.

2 Earthwise's scope of work did not include electrical
3 work. In fact, electrical work was excluded from
4 Earthwise's work, their contract and their bid. The
5 general contractor had the licensed electrical contractor
6 to do the electrical work.

7 The records of Mr. Postema's testimony, the record
8 that you have, shows that the septic installer worked with
9 Rob's Electric through a well-defined separation of
10 duties. Earthwise would do the preliminary excavation and
11 lay out the components of the septic system. Rob's
12 Electric would then come and install the wires and the
13 conduits and hook up the circuits of the septic
14 components. Rob's would then close up the system to
15 permit it to be inspected and wait until the next stage.
16 Again, this is a plat that's being developed. It has to
17 be backfilled and tested.

18 When Earthwise was ready to do its testing of the
19 system, Mr. Postema would call Rob's to open up the
20 electrical junction boxes. And here I have to take
21 exception with Ms. Clark-Mahoney's assertion that
22 Mr. Postema's testimony was hearsay. She says it's
23 hearsay that he called Rob's Electric. That's not
24 hearsay. That's Mr. Postema testifying, "I called Rob's
25 Electric." He's testifying about what he did. That's not

1 hearsay. So it's direct evidence of what happened both in
2 that particular case and generally applicable to this
3 project.

4 And, in fact, the evidence in this record conforms --
5 I guess, let me clarify that. Mr. Postema would call
6 Rob's Electric, they'd open up the system, Earthwise
7 Excavation would come, test the septic system and have
8 Rob's close back up the system, and then it would be
9 tested by the health district. The evidence in this
10 record confirms this pattern. In fact, Mr. Banks was
11 actually visiting the plat to inspect Rob's work. So I,
12 again, take exception with Ms. Clark-Mahoney saying, you
13 know, there were no electricians around. He was out there
14 to inspect Rob's work, so it's disingenuous now to say
15 that Rob's wasn't around or wasn't involved in this
16 project.

17 Mr. Banks confirmed that the permit for the project
18 was in the name of Rob's Electric, and when Mr. Banks
19 visited the jobsite, the box was open. He didn't see the
20 box being opened by anybody. So to suggest that
21 Mr. Mendez-Mata opened the box is pure speculation, and
22 it's not supported by the evidence. And, in fact, the
23 Department in this case has the burden of proof, and if
24 they don't see it happen and they don't have evidence of
25 it, they haven't met that burden of proof.

1 What Mr. Banks did see was Mr. Mendez-Mata performing
2 testing. The testimony from both sides, both Mr. Postema
3 and Mr. Banks, was that Mr. Mendez-Mata did not speak
4 English well. The administrative law judge made a finding
5 of fact confirming that Mr. Mendez-Mata did not speak
6 English well.

7 When Mr. Banks arrived, he said to Mr. Mendez-Mata,
8 "Did you do this?" It was really not clear that
9 Mr. Mendez-Mata knew what the inspector was referring to.
10 Did you take apart the box? Did you do the testing? Did
11 you do the entire installation? That's really not clear.
12 I tried to get Mr. Banks to clarify that, and he was not
13 able to clarify what Mr. Mendez-Mata would have
14 understood.

15 According to Mr. Mendez-Mata's boss, Mr. Postema,
16 Mr. Mendez-Mata was scared and intimidated by the
17 inspector. He understood that the inspector was
18 threatening to arrest. This might have been an
19 understanding. But Mr. Banks admitted in his testimony
20 that he told Mr. Mendez-Mata that he was breaking
21 Washington law by doing the work. So Mr. Postema's
22 testimony that Mr. Mendez-Mata was scared is supported
23 both by Mr. Postema's testimony and by Mr. Banks'
24 testimony.

25 It's Earthwise's position, and the ALJ made a finding

1 consistent with that position, that Mr. Mendez-Mata put
2 the wires back, put the box back together in reaction to
3 the conversation that he had with the inspector. And
4 that's really the focus. That's the evidence. We don't
5 dispute that Mr. Mendez-Mata put the box back together,
6 but the ALJ made a finding that this was in reaction to
7 the conversation that he had with Mr. Banks. He was
8 scared and intimidated. He understood the best thing to
9 do was to put it back together. That's really the only
10 firm evidence that's supported by the testimony and the
11 evidence in the record.

12 Mr. Banks didn't see the boxes being opened. He
13 didn't see any other electrical work being done by
14 Mr. Mendez-Mata. And Mr. Mendez-Mata testified -- I mean,
15 he didn't testify, but he admitted to Mr. Banks that he
16 was testing the systems. But testing alone is not a
17 violation of the Washington electrical regulations. In
18 fact, it's specifically permitted by the WAC's. And there
19 is no evidence or testimony that shows that Earthwise
20 Excavation changed any of the wiring or that they did any
21 of the final terminations. There's no evidence that
22 anybody did any of that final wiring except Rob's
23 Electric, the licensed permitted electrician on this job.

24 Now, the Department might disagree with when these
25 facts cross the line between passive testing and doing

1 termination of the circuit. That's really -- as I said
2 when I started, that's what this case is about. But if
3 that's the case, let's have a discussion about that.
4 Let's have a discussion with the contractor and say,
5 "Look, you've got to have pigtails. You can't do this.
6 You can't use electrical ports." If that's the issue,
7 then let's talk about that. But the Department did issue
8 four citations based on those facts. And that's what we
9 have a problem with. Let's instead agree about where that
10 line is and let's seek compliance with that. Let's
11 educate and seek compliance. That's the kind of thing
12 that warnings and (inaudible).

13 But again what happened is that four citations were
14 issued, three to Earthwise and one to Mr. Mendez-Mata.
15 Now I'd like to look at those specific citations.

16 The first citation ending in No. 315, it's for
17 failing to get an inspection or obtain an electrical
18 telecommunications work permit. As we pointed out in the
19 hearing, that citation doesn't fit these facts. Mr. Banks
20 testified that Earthwise is not either the project owner
21 nor an electrical contractor. By statute, Earthwise could
22 not have gotten an electrical permit. So he's citing them
23 for something they statutorily can't do.

24 I've been struggling to find a good example. It's
25 like being cited for not having car insurance when I don't

1 even have a driver's license. I'm not even supposed to be
2 driving. It just doesn't fit. There might be a violation
3 there, as I mentioned, but it's not this violation. It's
4 not failing to get a permit. Earthwise didn't even have a
5 contractor's license -- I mean an electrician's license to
6 pull a permit. And this is the ALJ's Conclusions No. 18
7 and 19 that we ask this court to affirm.

8 The second citation is No. -- ending in No. 316. It
9 is for offering to perform, submitting a bid for,
10 advertising, installing or maintaining cables, conductors
11 or equipment that convey or utilize electrical current
12 without having a valid electrical contractor's license.
13 Now, of all the citations, this one comes the closest.
14 But Earthwise did not do the work that Rob's Electric was
15 hired and permitted to do. They didn't offer to perform
16 the work, they didn't bid for it, they didn't advertise
17 for it, they didn't install or maintain the equipment.
18 Rob's did. Earthwise tested it, but that's all they did.
19 That's Conclusion No. 21 and 22 that we ask this Board to
20 affirm.

21 The third and last citation ends in 317. It's for
22 employing an individual for purposes of Chapter 19.28 RCW,
23 does not possess a valid certificate of competency or
24 training certificate to do electrical work. I have two
25 points to make with this citation. The first is that we

1 need to remember that it is the Department's burden of
2 proof when they issue a citation to prove the facts
3 supporting the citation. It is their obligation to come
4 to the hearing and present proof of each element and each
5 factual piece of the citation, and they didn't do that in
6 this citation. They didn't come and prove that Earthwise
7 employed Mr. Mendez-Mata for the purpose of working on the
8 electrical components. It's not enough to say that
9 Earthwise was Mr. Mendez-Mata's employer. The Department
10 must show that he was employed to do electrical work, and
11 that has not been shown. That was Conclusion No. 23 of
12 the administrative law judge that we ask you to affirm.
13 Again, he was only at the site to do passive testing.

14 The second point I'd like to make is that it's
15 similar to the first listed citation. Just like Earthwise
16 could not have obtained a permit for the job because
17 they're not an electrical contractor, they can't hire
18 somebody to do electrical work who's not a -- because they
19 don't do electrical work. That's not what they bid for.
20 So it's citing them for something that they're not
21 statutorily eligible to do.

22 Finally, as I mentioned, really what this case is
23 about is when is the line crossed between testing and
24 doing circuit work? That's something that should have
25 been warned. I've raised to the Department, and we

1 haven't seen satisfactory opposition to this that RCW
2 34.05.110 applies, and that's an administrative law
3 statute that requires an agency to warn and inform a small
4 business of violation of state law before a citation may
5 be issued. And without -- until I see from the Department
6 why that statute doesn't apply, I would ask that that
7 statute be considered and applied by the Department.

8 Thank you for your attention, and we ask that you
9 affirm the administrative law judge's decision. Thank
10 you.

11 CHAIRPERSON PREZEAU: Okay. So just what I would
12 very much like to do before we ask questions is give
13 opportunity for rebuttal, opportunity for rebuttal, and
14 then we'll open it up for questions. Does that seem
15 reasonable? Thank you.

16 So, Ms. Clark Mahoney.

17 MS. CLARK-MAHONEY: Yes. 35 -- 34.05.110, whether it
18 be a small -- the Department did not -- the Department did
19 challenge the conclusion of law that that didn't apply,
20 but counsel has indicated he did not appeal that and he
21 didn't argue it, and I would argue that that's not before
22 the Board today.

23 The arguments presented by Earthwise, while it's true
24 that Mr. Postema testified that he called Rob's Electric
25 and can testify to that, he cannot testify that they were

1 there and that they did the work because he was not there.
2 The only person there was Inspector Banks, and Inspector
3 Banks is the one who saw what was occurring at the time.
4 Rob's Electric was not there for the inspection, and
5 Inspector Banks testified that that was not uncommon. And
6 when he arrived, he did see the bare wires in the
7 extension cord, and he saw them re-terminated, reattached
8 in the box. And, in fact, the ALJ even agreed that that
9 occurred, that there was that brief amount of doing
10 electrical work, whether it was out of fear or because he
11 thought that he was supposed to.

12 Nonetheless, that was the electrical work performed,
13 and that counts. It is electrical work. It's work that
14 requires a permit, it's work that requires a licensed
15 electrician, and it was done by Earthwise's employee. So
16 that in and of itself was sufficient to support the
17 citations, but also, I think that the evidence of the
18 observations of Inspector Banks and the circumstances
19 involved support that and Mr. Postema's testimony that he
20 considered it a reasonable activity if there's no pigtail
21 for his employees to open up the box and pull the wires.

22 The analogy to driving is an apt analogy. If you're
23 driving without a -- you have no license, you're not
24 supposed to be driving, then you're -- and you have no
25 insurance, if you're driving without the license and

1 without insurance, you can be cited for not having
2 insurance and for driving without a license. And the real
3 truth is, yes, you should not have been driving just as
4 here. Mr. Mendez-Mata should not have been doing
5 electrical work in the field.

6 The testing that was involved, in fact, the testimony
7 at hearing supports that passive testing is permitted.
8 The passive testing is that they are not doing the
9 electrical work. They are merely using the pumps. All
10 the work should be already set up and they test to see if
11 it works. It's not to say, "Oh, it's passive testing if
12 you come in, open up the electrical box, start attaching
13 wires and performing electrical work in order to see that
14 it works." So, in fact, it was not passive testing, and
15 that was testified to as well. It's the Department's
16 position that the evidence clearly demonstrates that all
17 the violations were committed, and we would ask that they
18 be affirmed.

19 CHAIRPERSON PREZEAU: Are you finished,
20 Ms. Clark-Mahoney? Are you finished?

21 MS. CLARK-MAHONEY: I'm sorry. Yes, I am.

22 CHAIRPERSON PREZEAU: Thank you very much.

23 Mr. Hausmann, please.

24 MR. HAUSMANN: Thank you. I really don't have a lot
25 to -- as far as rebuttal. I think that we agree that the

1 wires were reattached. That's not a factual dispute. But
2 that was explained by Mr. Postema, it was understood by
3 the ALJ, and the ALJ accounted for that in her decision.
4 It was reaction to the way that he was approached by the
5 inspector, which I'm not saying was inappropriate. Just
6 it wasn't a violation that merited a citation.

7 And forgive me. I'll open to Ms. Clark-Mahoney. I
8 meant to mention in her direct argument, she mentioned
9 that Mr. Postema said it was appropriate to open a box and
10 pull the wires out, and she just mentioned that the
11 evidence supported that Mr. Mendez-Mata opened the box and
12 pulled the wires out. The evidence doesn't support that.
13 Mr. Banks said he arrived on the job and everything was
14 pulled apart and that followed Mr. Postema's testimony
15 where he said that he called Rob's Electric to open up the
16 box. So I think the Department hasn't met its burden of
17 proof.

18 Thank you very much.

19 CHAIRPERSON PREZEAU: Thank you.

20 So, Board members, anybody want to jump in on this?

21 BOARD MEMBER BAKER: Do you want to go first, Rod?

22 BOARD MEMBER BELISLE: Sure.

23 Well, I guess my first -- I made some notes here. My
24 first thought is I can't agree that the work that
25 Mr. Mata was doing is passive testing. I think it's clear

1 by the definition on the record, page 40, passive testing
2 refers to wiring to be disconnected or terminated would
3 not qualify as passive testing. And clearly, the wires
4 were disconnected. They were jammed into the end of an
5 extension cord, and then at some point during the
6 investigation, they were replaced back under the wire nuts
7 and the box cover was replaced. So in no world that I
8 know of that's passive testing. So I think we should
9 agree to that.

10 You made comment that this should have been a warning
11 instead of four citations, and I have to remember back to
12 the record that the inspector, during the investigation,
13 asked questions of the person on-site. He responded,
14 "Yes, I did this. No, I'm not an electrician." And then
15 he handed him a card and said, "You should call my boss,"
16 upon which he tried to call the boss, had a brief
17 conversation, and then the phone call was disconnected.
18 He tried to call again and it went to voicemail. And then
19 in the record it says that he called three more times on
20 three different days. So on three corresponding days
21 following this, those phone calls all went to voicemail
22 and not one call was returned by Earthwise Excavating. So
23 in my world, that seems like the inspector is trying to
24 complete the investigation, trying to have a conversation
25 regarding the situation. And perhaps had that occurred,

1 my expectation is maybe a warning would have occurred.

2 But because there was no correspondence by the contractor,
3 the inspector has a duty, has a responsibility to fulfill
4 his job, and that's what he did.

5 So the four citations that were issued, in my mind,
6 were justified because there was no attempt by the
7 contractor or the person being cited to work with him to
8 resolve the issue.

9 The concern about whether he should be cited as a
10 contractor, basically, the way I read the law is if you do
11 electrical work, then you have to conform with all the
12 laws. So once you cross that line of doing electrical
13 work, and in my mind, passive testing did not occur, he
14 was doing electrical work, then you're bound by all the
15 laws which says if I do electrical work, I have to be a
16 contractor, I have to supervise my employees, I have to
17 take out a permit. And none of those things occurred. So
18 those three citations fall under the law as being
19 appropriate.

20 The small business statute, I think the ALJ said in
21 this case it clearly didn't apply, so that's kind of
22 irrelevant.

23 I guess that's my perspective on it.

24 CHAIRPERSON PREZEAU: All right. And before Don, I
25 know you've indicated you want to say something, I very

1 much want to get something into the record. And that is,
2 I'm reading from the transcript from the hearing on
3 February 20th, and it's in the Board's packets. It begins
4 on the handwritten page 139. It's on transcript page 80.
5 And it's -- what is this called? This is
6 cross-examination of Mr. Postema by Ms. Clark-Mahoney.
7 And beginning on line 12 it says, "It wouldn't surprise
8 you to know that Mr. Mendez-Mata had put the two wires
9 into the extension cord to do the testing?"

10 Response, "Not completely, no."

11 "And did he tell you that's what he had done?"

12 Answer, "Afterwards."

13 I think the record clearly indicates that in order to
14 remove the wires from the box, you have to open the box
15 and then remove the wires from the box. So I believe the
16 record actually is in direct disagreement with your
17 statements this morning, Mr. Hausmann, and I just want to
18 call the Board's attention to that.

19 Additionally, I want to add that on page 88,
20 handwritten 88 in the testimony -- the transcript, page 29
21 of the transcript, Mr. Banks, the inspector, is under
22 cross-examination from Mr. Hausmann. It's the
23 conversation about -- so (as read), "You were at the job
24 site to review the permit for Rob's Electric; right?"

25 Answer, "Yes, sir."

1 "Did you see Rob's Electric do the work on the
2 subject house?"

3 "No, sir."

4 "Did you ask them what work they had performed in
5 conjunction with Mr. Mendez-Mata?"

6 "Yes, sir."

7 "What did they tell you?"

8 "They told me that he did not work for them and they
9 also told me that the job was - the electrical
10 installation on the septic system was complete and should
11 not have been removed or taken apart. And they wanted me
12 to perform my electrical inspection, which I did do after
13 my investigation."

14 And I don't recall exactly where it is in the record,
15 but it's probably the inspector indicates when asked that
16 he was confused by the actions taken by Mr. Mendez-Mata
17 because the house had permanent power and was actually --
18 had Mr. Mendez-Mata recognized that, he probably could
19 have gone to the panelboard, energized the circuit and
20 performed passive testing of the pump system because there
21 would not have been any necessity to open the junction
22 box, remove the wires, create the hazard that was created
23 by breaking the duct seal in the system that would -- if
24 not remedied -- in the record, if not remedied would have
25 allowed for methane gas to potentially penetrate the

1 electrical system which could have resulted in an
2 explosion. And if Rob's Electric didn't know that this
3 de-termination had happened, they wouldn't know because
4 they assumed that passive testing could have been
5 performed -- and I'm predicating this on the fact that I
6 believe that Mr. Postema called Rob's Electric and asked
7 them to prepare for these installation -- this testing,
8 and I believe that Rob's Electric looked at this
9 installation, so we don't have to open the junction box
10 and put a pigtail, which was not, because it's energized.

11 So I wanted to get that into the record.

12 So, Mr. Baker?

13 MR. HAUSMANN: Madam Chair, may I -- is it open for
14 us to respond to that specific --

15 CHAIRPERSON PREZEAU: Not just yet. I want Mr. Baker
16 -- to give him a chance.

17 BOARD MEMBER BAKER: So I grew up in the residential
18 industry 35 years in the trade, so I'm very familiar with
19 what the scene looked like out on-site, right? Block
20 housing, Rob's Electric was probably in there working
21 somewhere and called for an inspection for a final or a
22 rough-in that they had worked on previously. You guys are
23 out there doing a passive test. Just so we know, a
24 passive test, we all understand, doesn't involve removing
25 wire nuts. When you start removing wire nuts, it's no

1 longer a passive test. Now you've entered into a
2 different arena.

3 Whether Rob's Electric was called and whether they
4 came out and opened the junction box and strung the
5 extension cord is almost irrelevant but somewhat comical
6 to me because I don't think a licensed and bonded
7 contractor would string an extension cord across the
8 ground and say, "Okay. Here's the cord. Go ahead and
9 plug the wires in," or maybe even plugged the wires in
10 himself. But in any event, that's kind of irrelevant to
11 me whether that happened or not.

12 What we know happened was Mr. Mendez, once confronted
13 by the inspector, put it back together. We've got a
14 photograph of that here on the back page. Everyone's
15 probably seen the photo, right? Page 212.

16 And I don't -- it wasn't real clear on whether or not
17 the inspector had to take -- it sounds like the inspector
18 had to take this cover off to take this photograph, that
19 Mr. Mendez had put the cover back on and the inspector
20 pulled the cover off to take this photograph. That's the
21 impression I have in my mind from the stuff that I read in
22 here.

23 So that's, in my mind, where an installation took
24 place. Somebody did an installation right there. If
25 Rob's Electric did, in fact, take it apart so it could be

1 tested, then Mr. Mendez put it back together, and that was
2 an installation. And that triggered all those citations
3 where you have to have a contractor's license, you have to
4 have a permit, you've got to get it inspected. All these
5 things.

6 And I'm wondering if anybody has gone back and -- a
7 licensed electrician has gone back to this junction box
8 and make sure it's put back together properly or if it's
9 just -- if the inspector put it back together and moved
10 on. Because someone needs to go back and make sure it was
11 put together properly. I can't tell from the photograph
12 if it was put back together right.

13 It's interesting to me that Mr. Mendez knew how to
14 put it back together. If he got there and it was taken
15 apart and a couple wires were hanging out and that was the
16 standard protocol and they've been doing it that way for
17 several houses, and he just plugs the extension cord in
18 and this is what he's been doing, how did he know how to
19 put it back together so quickly? He's not a licensed
20 electrician, and he's putting white to white and black to
21 black. But a lot of times with these types of systems,
22 they're using the white wire and that SO cord and they're
23 connected to a black wire. So it's a little bit tricky
24 how that goes back together sometimes, and I'm just
25 curious how he knew how to put that back together if he

1 didn't take it apart himself.

2 Yeah. I believe that he did perform an installation
3 here when he put that back together. If he'd have got up
4 and walked away, we wouldn't be sitting here today. But
5 because he put this back together, he performed an
6 installation. If Rob's Electric was, in fact, the
7 contractor of record that was supposed to be doing this
8 work and you did call him out and they did open it up that
9 morning, I don't understand why Mr. Mendez didn't just
10 walk away and Rob's Electric come back a few hours later
11 and put it back together and we wouldn't be here. Like I
12 said, we wouldn't be sitting here today looking at this
13 matter.

14 CHAIRPERSON PREZEAU: All right. Mr. Hausmann, you
15 indicated you have some additional comments.

16 MR. HAUSMANN: Well, for completeness, when you
17 referred to page 88 of the transcript in Mr. Banks'
18 cross-examination, just on the next page -- well, I guess,
19 the last line of page 88, the question is (as read), "Did
20 they tell you they had opened the boxes so that Earthwise
21 could have access to the controls and the power?"

22 "They did not."

23 The question, "Did you ask them that question?"

24 "I didn't."

25 "Did you ask them who opened the box?"

1 "I did not."

2 So I think that the testimony wasn't that they didn't
3 do it. The testimony was that he didn't ask them whether
4 they had done it or not.

5 CHAIRPERSON PREZEAU: Yeah. I know. I mean, it's
6 the record that he did not ask that question. But then,
7 you know, your client indicates that, when speaking with
8 his employee, that, you know -- again, this is page 80 of
9 the transcript, 139 of the total packet (as read), "It
10 wouldn't surprise you to know that Mr. Mendez-Mata had put
11 the two wires into the extension cord to do the testing?"

12 "Not completely, no."

13 "And did he tell you that's what he had done?"

14 "Afterwards," is his response.

15 And then I draw from that that Mr. Mendez-Mata
16 admitted to Mr. Postema in a conversation that he had
17 performed the initial work of removing the wires from the
18 junction box and then -- and I must comment on this. To
19 have a practice of taking building wire and inserting them
20 into a hot extension cord to energize a circuit I find to
21 be completely less than professional. It's like sticking
22 a -- it's like any device you're going to plug in in your
23 house, whether it's a lamp, it's equivalent, to me, of
24 cutting the cord cap off, stripping the wires off and
25 jamming the wires into a receptacle in your house.

1 Understand that this was not a permanent installation, but
2 I find that to be -- if that's what the industry standard
3 is, I would very much like to see that changed.

4 BOARD MEMBER BAKER: Well, not to mention, these are
5 stranded conductors, and plugging those into an extension
6 cord is a little bit challenging. Of this, I know.

7 CHAIRPERSON PREZEAU: So any other comments by the
8 Board members? I will just echo --

9 BOARD MEMBER GRAY: Madam Chair?

10 CHAIRPERSON PREZEAU: Oh, I'm sorry. Mr. Gray.

11 BOARD MEMBER GRAY: I have two questions. I guess
12 the first one I would like to address to Ms. Clark-Mahoney
13 regarding the Department's brief, page 4 handwritten 14,
14 and it begins on line 18 where the statement says: "Judge
15 Shefler concluded," and if you read through that
16 paragraph, near the bottom it says, "The preponderance of
17 the evidence showed that his actions were reactive and
18 insignificant . . ." And so all I have is a transcript.
19 I don't have the context there to understand what was
20 intended by the term "insignificant."

21 It seems to me that we had an unqualified worker
22 doing energized electrical work, which, in my mind, is a
23 very dangerous precedent. Two-thirds of the
24 electrocutions in an American workplace occurred to
25 nonelectrical workers, and doing energized electrical work

1 would not even be allowed by a qualified electrical
2 worker, let alone an unqualified person.

3 So my question is, is that what is intended by the
4 term "insignificant," or is she saying the fact that we
5 just did something small that would not warrant a permit
6 would be insignificant? I'm just trying to understand
7 what is intended by the word "insignificant."

8 MS. CLARK-MAHONEY: I took it to mean the second --
9 the last page that he did -- that she accepted the
10 testimony and inferences from it that Mr. Mendez-Mata was
11 frightened by Inspector Banks, and when he was indicating
12 it's wrong that he reacted and reconnected the wires and
13 that she considered reconnecting the wires insignificant
14 work, which I take -- which I -- in my notes (inaudible)
15 saying that there is no exception to the electrical work.
16 But that is how I read that. That's what the judge said,
17 how I read it.

18 MR. HAUSMANN: Can I give our perspective on it, the
19 same question?

20 BOARD MEMBER GRAY: Sure. Sure. If it pleases the
21 Chair.

22 MR. HAUSMANN: The insignificance is not the
23 electrical work. I think the insignificance is but for
24 his fear or of his being startled, he wouldn't have done
25 that. It's not the practice that they typically have. He

1 did it -- he did it. It was an isolated occurrence.
2 That's the insignificance. I don't think to any
3 electrical worker, termination is insignificant. We're
4 not suggesting that they get to do this kind of work
5 because it's not significant work.

6 BOARD MEMBER GRAY: All right. Thank you.

7 And then the second question I have is that, if I
8 understand the process correctly, technically, there was
9 an open permit on this work, that someone, Rob's Electric,
10 had actually pulled a permit for this particular
11 application. And I read through this very carefully, and
12 I believe this is the same installation that the inspector
13 was out there to look at, if I understand it clearly. And
14 so, in my mind, it appears there was, in fact, a permit
15 for the work that was done. However bad or good or
16 whatever, there was a permit for this work. So I'm trying
17 to justify this in my mind why we would then cite another
18 employer for not obtaining a second permit for this same
19 work that was done. It seems to me almost double
20 jeopardy. They had a permit there; it's just that someone
21 other than who should have been doing the work under that
22 permit was doing the work. So I guess I would appreciate
23 somebody clarifying why there would have had to have been
24 two permits on this same activity.

25 MS. CLARK-MAHONEY: Permits are not transferable

1 between electrical companies. Each electrical company --
2 or each electrical contractor that is going to do the work
3 has to draw a permit for the work that they are going to
4 be doing. And it's not per job, it's -- I mean, in other
5 words, even if an electrical company pulled a permit, went
6 out to do it and had a dispute, left, and somebody else
7 was going to come in and finish the work, that electrical
8 contractor would also have to pull a permit.

9 MR. HAUSMANN: I agree. But our position is that we
10 did not go out there to do electrical work. We went out
11 there to do testing. And clearly, as I mentioned in my
12 opening statements, we can disagree about whether that --
13 whether that was safe or an appropriate process, and we're
14 open to that discussion. But to issue four citations, I
15 think, is -- like you say, it's overkill or it's kind of
16 hitting the wrong mark.

17 CHAIRPERSON PREZEAU: Thank you. I'm going to go to
18 Dominic, and then Alice has something --

19 BOARD MEMBER BURKE: I just second Don's -- almost
20 everything Don said. I mean, you know, as soon as you go
21 into that junction box and you start working on those
22 wires, you go into the installation. There's many, many
23 safety reasons that don't even come into play here and
24 other laws that come into play when working on energized
25 circuits. Anybody in the contractor field knows NFPA 70E.

1 You have arc flash laws you have to follow. There's a lot
2 of things you have to do which is why these installations
3 are required by contractors and licensed people. So I
4 agree. Plugging stranded wire into an extension cord is a
5 safety hazard.

6 I also -- I was going to make the point that did
7 Rob's go in and inspect what Mr. Mendez did after the fact
8 to make sure that the connections were good? There is
9 grounding that he doesn't understand necessarily why we do
10 it, and the safety of the circuits and personnel. So, I
11 mean, there's a lot of education that goes into something
12 as simple as tying a J box back together.

13 So that's really all I have.

14 CHAIRPERSON PREZEAU: Thank you, Mr. Burke.

15 Ms. Phillips?

16 BOARD MEMBER PHILLIPS: I want to explore your theory
17 on you weren't performing electrical work so you don't
18 need to pull a permit. So if a contractor goes onto a
19 jobsite and performs electrical work even though they know
20 they're not supposed to, under your theory, would they be
21 -- they would not -- we would not cite them for performing
22 electrical work without --

23 MR. HAUSMANN: No, no. I think --

24 BOARD MEMBER PHILLIPS: So how does that differ?

25 MR. HAUSMANN: Well, I think what's undisputed and

1 what's different about this case is that passive testing
2 is permitted by septic installers, and Earthwise
3 Excavation undertook to do passive testing. They did that
4 in a manner that I can see is offensive and goes against
5 what the electricians think is passive testing, but
6 Earthwise endeavored, that's what they attempted to do,
7 whether it's through pigtails.

8 It's their position -- and I want to make a larger
9 statement, but it's their position that the houses weren't
10 powered. Mr. Banks can say they were, but what Mr. Mendez
11 did and what Mr. Mendez believed when he went out there to
12 do the work is that the house was not powered. So we have
13 to go with what's in the record, not what might have been
14 in the record or what we think. You know, we can read
15 between the lines. But what was in the record is that he
16 went out there to do testing, passive testing. So that
17 distinguishes it from your circumstance where a contractor
18 puts in a circuit or installs some electrical components.

19 BOARD MEMBER PHILLIPS: So your argument hangs in the
20 balance of whether it would be considered passive testing
21 or not?

22 MR. HAUSMANN: Correct. And we understand that we
23 have a close call or a difference of opinion on the
24 passive testing.

25 BOARD MEMBER PHILLIPS: Thank you.

1 CHAIRPERSON PREZEAU: We definitely have a difference
2 of opinion on passive testing.

3 I would very much also like to call into everybody's
4 -- going back to the transcript, Mr. Banks, who's the
5 inspector, is an electrician. I'm on page 11 of the
6 transcript, handwritten page 70. Direct examination by
7 Ms. Clark-Mahoney. (As read) "Inspector Banks, what work
8 did you do before you were an inspector for the Department
9 of Labor and Industries?"

10 "I did electrical work. I worked for a company, Acme
11 Construction, for almost 12 years doing project
12 management, estimating. When I started though, I did
13 electrical work and I ran electrical jobs."

14 "Were you a licensed electrician?"

15 "I was then. I am now a master electrician."

16 So being the fact that he is a master electrician, I
17 would think that he would be able to discern whether or
18 not there is permanent power to a residential permanently
19 installed panelboard.

20 And on page 16 of the transcript, handwritten page
21 75, line 10, this is Mr. Banks, and I quote, "So I'm not
22 sure why he didn't ask the electrician to get power into
23 the box because there was power to the house and it was -
24 the septic system control was connected to the house
25 wiring, as it would be - as it is today," indicating that

1 the circuit -- you know, as a master electrician, I would
2 think that -- and Mr. Mendez-Mata is not an electrician,
3 he would be in a better position to ascertain whether or
4 not the house actually had permanent power. I also -- so
5 I just wanted to make that discursion [sic].

6 And I also want to speak to the idea of passive
7 testing. And we've had a lot -- this Board has had a lot
8 of conversation with respect to fire alarm systems, about
9 what exactly is passive testing. And, I believe, the
10 definition is very clear. Once wires are removed, once
11 that junction box is open, once, you know, de-termination
12 happens and re-termination, it is no longer passive
13 testing. The irony here is I believe -- you know, it's
14 not in the record, but I am inferring from the record that
15 Mr. Mendez-Mata would have had the opportunity to actually
16 perform passive testing because I believe the house had
17 power and I believe that the system was actually wired and
18 was in a state that would have allowed for passive testing
19 to happen with bumping the -- bumping the pump motors by
20 energizing the circuit to see if they're going -- you
21 know, see if they're operational.

22 Are there any other -- any additional comments? Any
23 additional questions by the Board members?

24 BOARD MEMBER NORD: I have one.

25 CHAIRPERSON PREZEAU: Okay. Mr. Nord.

1 BOARD MEMBER NORD: Rod, Dominic and Don echoed my
2 thoughts on this matter. But I also have another thought.
3 We had a licensed electrical contractor, Rob's Electric,
4 who did pull the permit, went out and did the work with
5 their own competent employees with the expectation that
6 when they sealed that work up and they were done, their
7 liability for their work is at a standpoint that they know
8 it was competently done. You have another contractor, who
9 is not a licensed contractor for electrical work, does not
10 have employees who are competent to do the work and
11 licensed to do it, the moment they go in and they
12 compromise the work done by the licensed contractor, the
13 whole job that the licensed contractor has done is now
14 suspect and there's a liability issue. Because Rob's
15 Electric went out with one expectation that the job is
16 complete and done properly, another contractor has entered
17 his work and tampered with it, at which point then is that
18 job still correct? At what point can the inspector say,
19 "I have looked at it. It is correct," with the
20 expectation nobody else who was not competent and not
21 licensed is going to go in and tamper with it? We have a
22 compromised permit now with Rob's Electric, and we have a
23 compromised work activity that was done properly at one
24 time that may not be proper now.

25 MR. HAUSMANN: Right. And the testimony from

1 Mr. Postema is that they call Rob's Electric to open it up
2 and do their testing and then they call Rob's again to
3 finish the termination and to seal it up. So the work
4 that they do doesn't change the circuit or modify
5 anything. It doesn't finish it. It's not the last hands
6 on the job. The last hands on the job is Rob's Electric.

7 BOARD MEMBER NORD: But we still have an employee who
8 is not a Rob's Electric employee who's working in the
9 middle of a Rob's Electric installation. That is a
10 problem.

11 CHAIRPERSON PREZEAU: All right. Thanks, Mr. Nord.
12 Mr. Ward, you wanted to say something?

13 BOARD MEMBER WARD: Yes. I couldn't surmise it
14 better. Rod, I liked your leadoff summary at the very
15 beginning, and I think you hit it right on the mark. And
16 I agree with Don also.

17 Being new to the Board, you know, one of the things I
18 always kind of -- what am I charged to do here? What am I
19 supposed to be looking at? And I think it's very clear
20 and the language is clear that to minimize the potential
21 threat to the public's health, safety and welfare by
22 ensuring that those who work with electricity are
23 competent and licensed. And I think that two of those are
24 clear in the citations: competency and licensing.

25 And I have to admit when I came in here, I was

1 questioning in my own mind whether or not a permit was
2 needed in this case, because for one, it's not their job.
3 I think it went beyond their scope of what they would
4 normally do. It's clear when we heard this that they had
5 this slice of the project. But, you know, the more I
6 thought about this dialogue -- that's the value of
7 dialogue -- absolutely. They got in the middle of
8 somebody else's work and changed it. They modified it.
9 And what's to say that -- how does anybody know that ever
10 occurred after the fact? And so I have a problem with
11 that. And so I think you have had it right on the point.
12 So thank you.

13 CHAIRPERSON PREZEAU: So to that end --

14 BOARD MEMBER BURKE: Tracy, I just want to speak to
15 what he said a little bit ago. I don't think that there
16 were any facts or anything stating that Rob's was the last
17 hands on this installation, from what I've seen here.
18 Because I think that's what, Don, you and I were asking.
19 If that's typically what they do, I understand what you're
20 saying, but I don't think there's anything here that says
21 that Rob's did go back and verify the installation or
22 confirm it and accept the liability.

23 CHAIRPERSON PREZEAU: Which would be new information
24 and would not be acceptable for this Board to understand
25 that, at least, yes, not be acceptable to understand that.

1 So it seems fairly -- as the Chair, it seems that
2 we've had a good dialogue, good discussion. I am hearing
3 from multiple Board members a fairly what seems to be
4 consistent message.

5 So what I would like to do is turn our attention to
6 the proposed OAH proposed decision and ask the Board
7 members if it -- it feels to me anecdotally that the
8 Board, after reviewing the transcripts, may be in the
9 spirit of reversing the ALJ's decisions on the setting
10 aside the three citations. We're going to vote on that.
11 We're going to vote on, obviously -- and for the new --
12 the four new Board members, the Board has the ability --
13 this proposed order, which begins on page 36 handwritten,
14 the Board has the ability to alter the findings of fact.
15 We can strike findings, including striking findings of
16 facts. And we can also alter conclusions of law as well
17 as the proposed order.

18 So I just wanted to make sure folks understood that,
19 because it is a proposed order, unless we have the ability
20 to make those edits.

21 And I have certainly -- I'm sure all the Board
22 members have as well -- reviewed this proposed order, and
23 I must confess that I think that this ALJ, although I
24 certainly agree with her and her conclusion of law that
25 RCW 34.05.110(4)(a), I agree that -- with her position

1 that it does not apply. So I don't disagree with that.
2 But I'm certainly not sure how to proceed, and I'm
3 wondering if anybody has any thoughts on that. Rod?

4 BOARD MEMBER BELISLE: Well, not in the form of a
5 motion, but I would be in recommendation of reversing the
6 proposed order. I think the record is clear that the ALJ
7 got it wrong, and that I think we've made it clear here
8 that they did do electrical work, they weren't licensed,
9 and they didn't have a permit. So those citations should
10 be affirmed and not reversed.

11 I think we should also go back into the record and
12 either reject or remove some of the findings of fact and
13 conclusions of law in case this should go further because
14 they're inaccurate.

15 CHAIRPERSON PREZEAU: Yeah. So I'm going to ask Pam
16 to sort of give us some options here, because by my
17 recollection -- or by my reading, I should say, there's
18 some potential work that needs to be done with respect to
19 Findings of Facts 8, 9, 12, 13, 14, and Conclusions of Law
20 14, 15, 17, 18, 19, 20, 21, 22, 23, 24. I don't know if
21 that's -- so can you give us some help here, Pam, please.

22 ASSISTANT ATTORNEY GENERAL REULAND: Sure. Because
23 the Board, we've struggled with this issue in terms of
24 findings of fact and conclusions of law. What I would
25 suggest in this case is that you make, as Rod is

1 suggesting, the ultimate decisions sort of first in terms
2 of determine whether or not these citations should be
3 affirmed or set aside. And then what I would suggest is
4 that identify, perhaps, the inaccuracies in the findings
5 of fact and conclusions of law that you should be -- that
6 you're going to make a motion to strike those. Then
7 instead of trying to recraft language, we've had a lot of
8 discussion, and one option maybe is to then ask the
9 parties or Ms. Mahoney-Clark, if she's --

10 CHAIRPERSON PREZEAU: Clark-Mahoney.

11 ASSISTANT ATTORNEY GENERAL REULAND: Clark-Mahoney.

12 Excuse me. The prevailing party, to draft -- to redraft
13 findings consistent with the Board's decisions and rulings
14 and to consult with Mr. Hausmann regarding those. Because
15 we'll spend all day here going through each of the
16 findings. But the Board just needs to make sure that
17 you're clear in terms of what does the Board say is
18 inaccurate, what do you agree is accurate. And then from
19 that, Ms. Clark could propose an order consistent with
20 that decision.

21

22 Motion

23

24 CHAIRPERSON PREZEAU: All right. Very good. So
25 following counsel's advice, the Chair would very much

1 entertain motions that are relevant to the three proposed
2 orders contained in the ALJ's decision.

3 BOARD MEMBER PHILLIPS: Do you have to do these
4 individually?

5 CHAIRPERSON PREZEAU: Yes. We have to do them one at
6 a time.

7 BOARD MEMBER PHILLIPS: So I would make a motion that
8 Citation No. EBANX00315 be upheld.

9 BOARD MEMBER SCOTT: Second.

10 CHAIRPERSON PREZEAU: So motion and second for
11 Citation No. EBANX00315 be -- and I'm going to use the
12 word "affirmed." Does that work for you?

13 BOARD MEMBER PHILLIPS: That's fine.

14 CHAIRPERSON PREZEAU: Motion, second. Discussion on
15 the motion? All those in favor, signify by saying "aye"?

16 THE BOARD: Aye.

17 CHAIRPERSON PREZEAU: Opposed?

18 BOARD MEMBER: Opposed.

19 CHAIRPERSON PREZEAU: So let the record reflect we
20 have one vote in opposition. Motion carried.

21

22 Motion Carried

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Motion

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BOARD MEMBER PHILLIPS: I make a motion that Citation No. EBANX00316 be affirmed.

BOARD MEMBER: Second.

CHAIRPERSON PREZEAU: So a motion moved and seconded to affirm Citation No. EBANX00316. Discussion on the motion? Seeing none, all those in favor, signify by saying "aye."

THE BOARD: Aye.

CHAIRPERSON PREZEAU: Opposed?

BOARD MEMBER: Opposed.

CHAIRPERSON PREZEAU: Motion carried.

Motion Carried

Motion

BOARD MEMBER PHILLIPS: I make a motion that Citation No. EBANX00317 be affirmed.

BOARD MEMBER: Second.

CHAIRPERSON PREZEAU: It's been moved and seconded to affirm Citation No. EBANX00317. Discussion on the motion? Seeing none, all those in favor, signify by saying "aye."

THE BOARD: Aye.

1 CHAIRPERSON PREZEAU: Opposed? Motion carries.

2

3

Motion Carried

4

5 CHAIRPERSON PREZEAU: So, Board members, in the
6 spirit of -- I'm going to make an assumption that we are
7 in agreement of following counsel's guidance on how to
8 conduct this. For those of you that were here at last
9 quarter's meeting, the Board actually crafted in the terms
10 of the two appeals, we heard the Burriss Electric and
11 Legacy. We went through and made motions and there were
12 amendments and friendly amendments on commas. So just out
13 of respect for the parties that are in front of us, I
14 think this is -- and the Board, I think this is probably a
15 much more efficient way to move forward of identifying so
16 that the transcript can be complete so that a proposed
17 final order can be drafted and presented at the January
18 meeting. Okay?

19 ASSISTANT ATTORNEY GENERAL REULAND: Can I make a
20 suggestion?

21 CHAIRPERSON PREZEAU: Please.

22 ASSISTANT ATTORNEY GENERAL REULAND: I might suggest
23 that counsel would ask -- could identify for the Board
24 what the Department thinks needs to be changed to support
25 the decision.

1 MR. HAUSMANN: I wouldn't -- I'm not exactly clear
2 what's being proposed, but I do believe that
3 Ms. Clark-Mahoney and I could probably craft findings from
4 what we've heard rather than go paragraph by paragraph. I
5 don't know if you disagree or if you want to go paragraph
6 by paragraph, but I think we could --

7 CHAIRPERSON PREZEAU: Well, Mr. Hausmann, I really
8 appreciate what you just said. Because what I believe I
9 heard you say is that you are confident that you can work
10 collaboratively with Ms. Clark-Mahoney to craft something
11 that is a final order that is consistent with the Board's
12 three motions that we just made and the testimony --
13 excuse me -- and the discussion that we have had this
14 morning. That makes me very happy, and it probably makes
15 everybody in this room very happy. Because as the
16 respondent counsel, if you are confident, then that makes
17 me highly confident that the parties can work together.
18 And if that's the case, then I think --

19 MR. HAUSMANN: Hand it to us and we'll hand it back.

20 CHAIRPERSON PREZEAU: Yes, sir. I think our work
21 here then under this agenda Item 3.a. has been completed.
22 Rod?

23 BOARD MEMBER BELISLE: Can I just make a statement?

24 CHAIRPERSON PREZEAU: Please.

25 BOARD MEMBER BELISLE: You know, I mentioned in the

1 beginning that there were three phone calls made and there
2 was no response made. And had that communication occurred
3 then, we might not be here today. And although I don't
4 agree with the method in which the passive testing is
5 being performed out on the jobsite and, perhaps, maybe a
6 new look at that will be given and, perhaps, maybe a new
7 standard will go into play for this company so that we
8 don't encounter this again, but I can tell you that I
9 don't think anybody on this Board is here to try to impose
10 penalties on contractors that are just simply trying to do
11 a good job and somehow crossed the line. And having said
12 that, once it does get here, we have an obligation to
13 follow the law to the strictest letter, and unfortunately,
14 this is sometimes how it ends up. So I hope in the future
15 maybe this contractor will work with the Department and
16 try to come up with a solution that is receptive to
17 everyone.

18 CHAIRPERSON PREZEAU: Thank you, Rod, for your
19 statement. I very much would like to echo that. Thank
20 you. It's very well put.

21 A couple of -- just real quickly, in the event that
22 you are not able to reach agreement, be advised that this
23 matter will automatically be set for presentment at the
24 next regularly scheduled Board meeting. If an agreed
25 order has not been received by that date, the parties will

1 be expected to file their proposed orders and appear and
2 advise why their proposed order best reflects the Board's
3 decision. Hopefully this will not be necessary.

4 If you are able to reach agreement as to the form of
5 the order before the next meeting, please forward it to
6 the secretary of the Board, that's Steve Thornton, and
7 they will ensure it gets signed and copies provided to
8 both parties. Thank you very much.

9 So what do you say we take a break? I'm going to go
10 off of that clock and come back at ten minutes till the
11 hour, please. It's a 15-minute break.

12

13 (Recess taken.)

14

15 CHAIRPERSON PREZEAU: So the Electrical Board meeting
16 will reconvene. It is 10:51 a.m.

17 And before we get to Agenda Item No. 4 and ask our
18 new chief to deliver the secretary's report, I would just
19 like to make a few announcements, especially since we have
20 new Board members. And that is -- actually, Kevin asked
21 me, "Hey, Tracy, how long do these Board meetings usually
22 go?" which I think is maybe a question that's viable to
23 all the new Board members. And it really can vary widely.
24 The longest meeting that I can recall that I have attended
25 -- been on this Board since 2005 -- was we adjourned at

1 like 6 p.m. And for the record, it was my birthday.

2 BOARD MEMBER BELISLE: She's not mad about it,
3 though.

4 ASSISTANT ATTORNEY GENERAL REULAND: And you didn't
5 stay in attendance for dinner.

6 CHAIRPERSON PREZEAU: No.

7 But it can also -- we are -- it is -- you know, it's
8 not quite 11 a.m., and the only agenda items that we have
9 left are the secretary's report, the certification report,
10 public comment, and we are going to have a conversation
11 additionally about the bylaws, which brings me -- it is my
12 understanding that, Elissa, all the new Board members, you
13 sent them copies of the bylaws, right? Which is great.
14 And the operating principles.

15 MS. ZYSKI: Correct.

16 CHAIRPERSON PREZEAU: And then for new Board members,
17 the Department produces -- we did have a new rule
18 published, 296-46B, right, on July 1st. I believe it was
19 effective July 1st. So if you want, if you're like me and
20 you like -- you can certainly go online and look at the
21 19.28 or you can look at the associated rule online. I
22 like paper. So if you want hard copies --

23 MS. ZYSKI: I forgot those.

24 CHAIRPERSON PREZEAU: That's all right. If you want
25 hard copies, just let Elissa know and she will furnish

1 those at the July meeting -- or January meeting. Excuse
2 me.

3 MS. ZYSKI: Yes.

4 CHAIRPERSON PREZEAU: But I do want to call the new
5 Board members' attention, just remind existing Board
6 members, the bylaws lay out some expectations, but
7 Article 3 talks specifically about members of the Board.
8 And understand that the membership of the Board is defined
9 by RCW 19.28.311, but there's some piece in here about
10 responsibilities so I'd like to call people's attention to
11 this.

12 Your responsibility is to be present at a minimum
13 75 percent of all regularly scheduled Board meetings in a
14 12-month period. Certainly sometimes things come up that
15 get in the way of your work here at the Electrical Board,
16 and if you are not able to attend a Board meeting, if you
17 would either let me know or let Elissa know in advance.
18 It's nice to know. We obviously are covered under a
19 requirement to conduct open public meetings and we need to
20 have a quorum, so in the event that -- we have not yet,
21 during my time here, ever not had a quorum, but it's nice
22 to know ahead of time. So I just wanted to -- I have a
23 philosophy that if, when you equalize expectation, you
24 dramatically reduce conflict, so I just want to equalize
25 expectations regarding that. Any questions?

1 Oh, and typically, this is -- although I live in
2 Tacoma and I love the fact that we're here today, normally
3 Board meetings are at the Tumwater Labor and Industries
4 facility, although in April it's usually offsite
5 somewhere. But normally we're in Tumwater.

6 MS. ZYSKI: January will be off-site as well.

7 CHAIRPERSON PREZEAU: So Elissa is saying that
8 January's will be offsite. We're trying to find some
9 super cool places to have it, and I would say Tacoma would
10 be a super cool place to have it.

11 BOARD MEMBER: Second.

12 BOARD MEMBER PHILLIPS: Third.

13 CHAIRPERSON PREZEAU: Beautiful.

14 Any questions or comments about that? Everybody's
15 happy? Great.

16 And then, Elissa, remind me, have you updated the
17 contact list for the Board members including our new
18 chief? And if that is done -- or when that is done, would
19 you please e-mail that to all the new Board members, if
20 you haven't already?

21 MS. ZYSKI: Yes. The sign-in sheet, if you did not
22 change anything, which there is one revision here for Dave
23 Ward, but this is what information will be provided. So I
24 will get that finalized and sent.

25 CHAIRPERSON PREZEAU: Very good. Thank you.

1 Item 4. Secretary's Report

2

3 CHAIRPERSON PREZEAU: So, Steve, secretary's report.

4 SECRETARY THORNTON: Good morning, Madam Chair, and

5 fellow Board members. As previously stated, my name is

6 Stephen Thornton. S-T-E-P-H-E-N, Thornton,

7 T-H-O-R-N-T-O-N. I'm the chief electrical inspector for

8 the Department of Labor and Industries and the acting

9 secretary.

10 For our secretary's report for October 30, 2014,

11 budgetwise, our fund balance in September was \$7,784,136.

12 That represents about 4.6 months of operating costs. The

13 average monthly expenditures are \$1,584,858. The fund

14 balance is projected to trend downward to less than four

15 months of operating costs by the end of the biennium,

16 June 30, 2015, based on projected housing construction and

17 program expenditures. One thing that may change that a

18 little bit is our vacancy rate may help that fund balance

19 stay closer to even.

20 As far as customer service, we sold 30,433 permits

21 last quarter. 27,363 of those were processed online,

22 which is about 90 percent, which is down 1 percent from

23 the previous quarter. 95 percent of contractor permits

24 are purchased online, and that stays pretty consistent.

25 The homeowners usually buy about 55 percent of their

1 permits online. That's down about 1 percent from the
2 previous quarter.

3 Online inspection requests are made about 79 percent
4 online. About 67 percent of our license renewals are done
5 online, and that's an increase of 2 percent over the last
6 quarter.

7 We really haven't had any new testing labs approved
8 this quarter.

9 Some of our key performance measures, percentage of
10 inspections performed within 48 hours of the request, we
11 have a goal of 94 percent. Right now we're at 91 percent.

12 Our focused citations, we have a goal of 1,046. We
13 wrote 760.

14 Inspector stops per day, we do about 10.4 stops per
15 day per inspector.

16 Corrections issued that would result in a disconnect
17 if they weren't taken care of, 10,882.

18 Licensing process turnaround time is a target of
19 3.5 days. We're getting them done the same day right now.

20 Plan review has a goal of getting a plan approved and
21 out in three weeks. Right now they're doing it in about
22 eight-tenths of a week, so they're quite a bit ahead of
23 the goal also.

24 There were 8,392 electrical licenses processed last
25 quarter. This includes the new licenses and the renewals.

1 There's a one-day turnaround for licensing, also. And a
2 lot of these improved response times, turnaround times,
3 are due to our process improvements and our lean projects
4 that identify waste and try to streamline our processes.

5 CHAIRPERSON PREZEAU: Steve, may I ask you some
6 questions?

7 SECRETARY THORNTON: Certainly.

8 CHAIRPERSON PREZEAU: Or just make some statements,
9 too. The July meeting, Larry Vance, the interim chief,
10 reported about an amazing financial anomaly. There was a
11 huge revenue jump or sales -- huge jump in permit sales in
12 June, and the revenue was about \$800,000 above normal
13 monthly revenue. And how did you -- with the residential
14 contractors anticipating the implementation of the new
15 rule on July 1st and different standards for arc fault
16 circuit interrupters, and I'm assuming that everything
17 sort of financially -- since the numbers you have
18 indicated today, the fund balance is consistent with what
19 was reported in August, that we've -- that that anomaly
20 has not occurred again.

21 SECRETARY THORNTON: No, it has not. And we see a
22 small drop in the purchase of permits monthly because of
23 that -- everybody getting ahead of the game. Hasn't
24 really been as much of a downturn as we thought it might.
25 When you look at a graph and you see that spike, it's way

1 up there. And we thought, Well, it might affect us three,
2 four, five months down the road by "X" amount of dollars.
3 I mean, it has affected it, but isn't as low as I thought
4 it might have been when we first saw the spike.

5 CHAIRPERSON PREZEAU: Perfect. And then I'm looking
6 at the percent of inspections performed within the 48-hour
7 request. And clearly, the goal is 94 percent, and we're
8 at 91. What I think we are seeing is, as we have had the
9 ability through temporary inspector positions and
10 otherwise, you know, rebuild some of the -- or put in
11 place some of those positions that were previously lost
12 due to the downturn, but it sort of feels like we're
13 getting closer, we're incrementally achieving gains toward
14 getting -- hitting that 94 percent.

15 SECRETARY THORNTON: And we are. We're getting a
16 little busier, which makes the current manpower, you know,
17 a little harder to get around. We're doing a little
18 slower and more deliberate process of hiring people and
19 doing a lot better in our training before we put them out
20 in the field, which slows us down a little bit getting
21 them out and doing inspections, but it improves the
22 process and makes it a little less stressful for them and
23 gets them a little more organized with the way we've been
24 doing business. So it's a little easier for the
25 contractors to not have to deal with new people that are

1 learning everything the hard way.

2 CHAIRPERSON PREZEAU: Yeah. No. I mean, I think the
3 Department has done a really good job in terms of -- you
4 know, again, Larry, the interim chief, last quarter made a
5 statement that I didn't -- it hit me sort of between the
6 eyes when I was reading the transcripts. And he said it
7 took 69 months to recover the lost inspector jobs. That's
8 how long this recovery has taken, 69 months. And I'm
9 happy that we are in the place that we're at. I'm happy
10 that the Department, during that time, made some really --
11 put some effort into thinking like how do you want to
12 recall these folks back, you know. Because you know the
13 industry is going to come back and we're going to need to
14 rehire or hire and so would start training, what are our
15 opportunities for training so that when those folks hit
16 the street, if they haven't been inspectors previously and
17 had the benefit of that experience, that they can hit the
18 ground running and so better able to meet the workload and
19 the expectations and interact with customers and
20 contractors and electricians in a positive light.

21 SECRETARY THORNTON: Are you interested in how the
22 training program is set up and how we go about doing that?

23 CHAIRPERSON PREZEAU: I am. I don't know if the
24 Board -- if the Board members are.

25 SECRETARY THORNTON: I mean, I can explain it in

1 probably five minutes, if you want.

2 CHAIRPERSON PREZEAU: Oh, that would be great.
3 Please.

4 SECRETARY THORNTON: We used to interview and
5 advertise individually as supervisors, so we would look at
6 a very small geographic area. And like if I advertised in
7 Vancouver with the Intel jobs going on in Portland, you
8 get very few applications. Now we do it statewide. And
9 then we have a statewide interview committee, and once the
10 guys are selected, we have a six-week training program.

11 They come to the office, they get all their paperwork
12 done and ride with an inspector for a little bit. They
13 come to a training point that's either in Tumwater or
14 Tacoma, and we give them three days of training -- safety
15 training and a little bit of computer stuff the first
16 week. They go back to the field. They get the chance to
17 use some of that training.

18 They come back for another week, and they get mobile
19 inspections and some of the other permitting processes.
20 They go back to the field for a week and ride with
21 inspectors and try the stuff they've been taught.

22 Then they come back for a week of E-CORE training.
23 Faith Jeffries does that training for us. Then they go
24 back out and practice that.

25 Then they come back for one final week of training on

1 anything they may have missed or anything of that nature.
2 Then we put them out by themselves and let them learn a
3 few things on their own. And it's turned out very well.
4 I think we've put some good people out in the field.

5 CHAIRPERSON PREZEAU: Great.

6 BOARD MEMBER BAKER: Tracy?

7 CHAIRPERSON PREZEAU: Yes.

8 BOARD MEMBER BAKER: So just a question about plan
9 review. I kind of run it through my head here. Maybe it
10 doesn't make any sense to even ask. But I'm used to plan
11 review taking, you know, several weeks to get them back
12 from the state, and it seems like we've been exceeding our
13 goal for quite some time, it's been reported. Could you
14 just explain the process? I mean, if a large hospital
15 came in, I'm assuming it would probably take longer than
16 eight-tenths of a week.

17 SECRETARY THORNTON: Right. That's an average.

18 So one thing that plan review has done, they've gone
19 through a fairly extensive look at how they go through the
20 plans, and now they're in the process of going paperless
21 so that everything comes in on the computer. And they're
22 getting new computer screens and such so that they can go
23 through the plans a little quicker. If they need to get
24 them back to the customer, they can just e-mail them back
25 rather than rolling them back up, putting them back in the

1 mail, waiting for them to get there. So we're hoping that
2 that is going to speed things up even more.

3 So a lot of the things we're doing right now are
4 geared around getting rid of paper. And in theory, that
5 should make us a little more efficient everywhere until
6 the computer breaks and then you've got other problems.
7 But that's the direction we're going right now.

8 BOARD MEMBER BAKER: Is all the plan review done
9 in-house or is any of it outsourced?

10 SECRETARY THORNTON: No. It's all done in-house.

11 BOARD MEMBER CORNWALL: I would just like to -- have
12 a couple of questions on the number of focused citations.
13 I see that goal is 1,046. State total this time is 760,
14 about a 25 percent spread there. And I know that that
15 number has been higher at past meetings. So obviously,
16 there must be -- is there anything -- one particular thing
17 that you can attribute the increase in compliance to?

18 SECRETARY THORNTON: Decrease?

19 BOARD MEMBER CORNWALL: Is it because of the economy?

20 SECRETARY THORNTON: There are really two reasons why
21 we missed the goal that far. One is we're getting busier,
22 so a struggle sometimes to get the inspectors to not do
23 the inspections and do the compliance part because the
24 customers call and want their inspections. And then the
25 new people that we're putting on takes some of the

1 existing staff's time to try and teach them. So they're a
2 little slower at it, but they do a better overall job in
3 the end because of the training. But that -- probably the
4 biggest thing that will help that is more feet on the
5 ground, more people in the field.

6 CHAIRPERSON PREZEAU: Yeah. And more time in the
7 seat, right? The experience of it.

8 SECRETARY THORNTON: Yes.

9 BOARD MEMBER WARD: Tracy, I have something.

10 CHAIRPERSON PREZEAU: Yes. Please.

11 BOARD MEMBER WARD: To add on that, that's kind of an
12 interesting goal, too, because it's kind of tied to the
13 performance of those doing the work, too, the contractors
14 themselves. So their main -- there's nothing to find in
15 that given time period. So it's kind of tough to set
16 that, you know what I mean? It's kind of a moving target
17 for you folks.

18 SECRETARY THORNTON: It is. And we try to get there.
19 If we don't, we look at why. I mean, it's not
20 automatically assumed that somebody's not doing their job.
21 Over time you would think we would gradually educate
22 people.

23 BOARD MEMBER WARD: And I think that's what I would
24 want to make a point on that this is a real opportunity to
25 educate and communicate when you're seeing trends of

1 reasons for. To make sure we have a program to back that
2 and support that is really a good way to kind of take that
3 data and use it.

4 SECRETARY THORNTON: Right.

5 CHAIRPERSON PREZEAU: Well, and, in fact we -- the
6 Department used to -- the electrical program had this
7 corrections initiative, and it involved two principal
8 audiences. And as you could imagine, there is a huge
9 variation in size and scope of work for certain electrical
10 contractors.

11 So there are some electrical contractors that do
12 enormous industrial projects or large value projects and
13 then -- and some of those contractors do a wide sweep. So
14 you have contractors that -- you have entities that end up
15 with many citations because of not only the enormity of
16 the work they do, but the amount of work that they do.
17 And then you have another audience of smaller entities
18 that seem to be always in the principal's office.

19 And so one of Steve's predecessors, some of the Board
20 members were members when Ron Fuller was the chief
21 electrical inspector, and he was, I think, the principal
22 architect on that, sort of this correction-reduction
23 initiative to like let's educate -- not necessarily
24 educate, but let's work with those large volume employers
25 to figure out how we can make the process easier so that

1 they don't get tripped up, because they don't like to get
2 tripped up either. And then let's try to educate -- use
3 this as an opportunity for education and equalizing
4 expectations for the folks that, for whatever reason, seem
5 to end up in the principal's office.

6 And what's interesting is even though the number of
7 -- I'm very happy to hear that Steve's position on this is
8 if we don't -- this is one of those deals where if we
9 don't meet the target, let's understand why instead of we
10 absolutely have to meet the target, right? It's sort of
11 like crack the whip is, is it possible that the industry
12 is elevating -- collectively has elevated their standards?
13 I think that's possible.

14 I'm very much an optimist. But having sat on this
15 Board since 2005, I have not seen the number of electrical
16 disconnect corrections change significantly in a downward
17 trend. It moves back and forth, but it's typically a five
18 digit number. I mean, I don't know that it's ever been
19 below a five digit number since I've been on this Board.

20 So there are still those opportunities, right? There
21 are still those opportunities.

22 SECRETARY THORNTON: And that's something that, with
23 hiring the new trainer, once we see how that goes, we'll
24 probably take the initiative to do some training for the
25 contractors, too, along with our own staff and see if we

1 can't make some improvements there. I'm much more geared
2 towards outreach and solving the problems before they are
3 sitting here at the head of the table than waiting for it
4 to be a big issue.

5 BOARD MEMBER BELISLE: Tracy?

6 CHAIRPERSON PREZEAU: Rod.

7 BOARD MEMBER BELISLE: Well, since you said that,
8 Steve, I brought this up before, and that is in the past,
9 we used to have electrical inspectors that would teach
10 continuing ed classes for journeymen in the state, and I
11 know approximately a year or two ago it was determined
12 that that was a conflict of interest because they're
13 teaching the people that they are essentially potentially
14 regulating. And so that practice was discontinued. But
15 at the same time, we discussed that when we have
16 contractors that are having extensive violations, we're
17 going to go in and provide them training. And that seems
18 like the same conflict. It's just after the fact.

19 And so I would just like to kind of reiterate my
20 previous request that maybe we relook at that concept of
21 using electrical inspectors in an educational arena
22 because they are the most qualified to do that training.
23 I don't think any inspector has ever gone out and provided
24 training and then the next day gone out and trapped
25 somebody because of something they said the day prior.

1 I don't think there's any proof of that. I think that's
2 just speculation, at best. And I would like to think that
3 maybe the Department -- and I know Jose, at some point,
4 had said that they were going to look at this.

5 CHAIRPERSON PREZEAU: Well, you got out in --
6 brilliant remarks, from my perspective as well. And just
7 for the benefit of the new Board members, and I don't
8 know, Steve, if you're aware of this, but Jose Rodriguez,
9 who's official title is escaping me right now --

10 SECRETARY THORNTON: Assistant director, I believe.

11 CHAIRPERSON PREZEAU: Assistant director. Thank you.
12 For field services.

13 UNIDENTIFIED: And public safety.

14 CHAIRPERSON PREZEAU: And public safety. Thank you,
15 Megan.

16 SECRETARY THORNTON: My supervisor, by the way.

17 CHAIRPERSON PREZEAU: And he convened because of some
18 of the comments when he -- you know, he regularly,
19 especially when we're in Tumwater, will deliver that
20 Department legislative update, and we have an opportunity
21 to interact with him and ask questions. And he heard
22 several of the Board members' conflicting opinion -- or
23 shared opinion that Rod has of the value of electrical
24 inspectors doing training and education. And so because
25 of those, that dialogue, Jose convened a work group that I

1 was fortunate enough to be a part of. Some other folks in
2 the room were a part of it, but I was the only member of
3 the Electrical Board that was there. And I thought we did
4 some really, really good work.

5 It was discussed, I think, asked the question at the
6 last Board meeting, and I always want to -- I'm in every
7 -- know this: every quarter I'm going to ask the same
8 question if nobody else does is, "Hey, what's going on
9 with that work group?" Because I do not want to see that
10 fall off the table.

11 SECRETARY THORNTON: And I know they have convened,
12 like you said, and they have a couple of different
13 scenarios that they're wanting to send up the chain.
14 Right now Jose has it, and I'll check in with him and let
15 him know that it's not going to fall off the table.

16 CHAIRPERSON PREZEAU: And I think -- Rod, I don't
17 think -- I would strongly encourage you to consider
18 sharing with Jose exactly what Rod just said, and that is,
19 you know, if the inspectors are being asked to do
20 education and training, if the Department can see that
21 value with respect to the correction reduction initiative
22 we've had in the past, then help us understand -- and
23 that's not a conflict. Help us understand how, you know,
24 if the scenarios that are crafted with that kind of
25 philosophy, then help us understand how they should not

1 move forward, basically. I don't know that it was ever
2 articulated quite as succinctly as what Rod just said.

3 SECRETARY THORNTON: And it's something that we are
4 interested in getting to the bottom of it and seeing if we
5 can't fix it, too. It won't go away.

6 CHAIRPERSON PREZEAU: No, no. And I know -- I don't
7 want my -- I don't want anyone to infer that I was
8 implying that I felt the Department was not doing -- was
9 somehow acting in bad faith. That is not my -- please do
10 not infer that from any -- right? I think -- I just know
11 that Jose was very genuine in his desire to try and find a
12 common sense solution. It's just sometimes finding a
13 mutually agreeable common sense solution, especially when,
14 no offense, counsels are involved, it can be challenging.
15 I'm just looking forward to the day that we find the
16 solution.

17 SECRETARY THORNTON: Any other questions? Okay.

18 CHAIRPERSON PREZEAU: I do have one more, of course,
19 and that is it was reported at the last meeting that
20 during the last meeting that Rod -- technical specialist
21 Rod Mutch was in Kennewick.

22 UNIDENTIFIED: Yakima.

23 SECRETARY THORNTON: Yeah.

24 CHAIRPERSON PREZEAU: No. He was in Kennewick. If
25 you read the transcript, you would know that Rod Mutch was

1 in Kennewick. Sorry, Megan. And -- because he was doing
2 work about an engineering evaluation, and I did have a
3 conversation with Rod about the outcome. But it is my
4 understanding that we do not have a new entity on the east
5 side of the mountains who is approved to do --

6 MR. MUTCH: I have something on that since I talked
7 to you this morning.

8 CHAIRPERSON PREZEAU: So, Rod, do you want --

9 MR. MUTCH: It will be interesting.

10 CHAIRPERSON PREZEAU: -- do you want to -- yeah. I
11 mean, I just -- because we do not have a huge community of
12 engineering firms that are approved by the Department to
13 do evaluations, and I think -- you know, and I don't know
14 how many of them are on the east side of the Cascade
15 curtain. And . . .

16 MR. MUTCH: So thank you, Madam Chair, members of the
17 Board. My name Rod Mutch, R-O-D, M-U-T-C-H. And Tracy
18 asked me this morning about that engineer that had applied
19 to perform engineering evaluations.

20 So an engineering evaluation is something the
21 Department allows when an unlisted piece of utilization
22 equipment comes into the state, for example, from
23 overseas. It may meet a standard that is not a Washington
24 State or a United States standard. We have the ability to
25 have an engineer evaluate the standard that that piece of

1 utilization equipment was built to and approve it. So
2 that's what the engineering evaluation process is.

3 Currently there are three engineers in the state that
4 can do that. There is one on the east side of the state
5 and two on the west side of the state. And so what Tracy
6 was asking about was an engineer had applied who is in
7 Kennewick. I went and met with him, and there were some
8 -- there was some confusion about what the process was.
9 He told me that he would resubmit his application, and I
10 told him as soon as he did that, we would review it and
11 try to expedite that. Tracy asked me about that this
12 morning, and I said that I hadn't received any information
13 back about it. I opened up my computer, and at 8:30 last
14 night he sent me an e-mail with that application. So we
15 have the possibility of another engineer on the east side
16 of the mountains that can perform those evaluations.

17 So it's really an advantage to contractors and
18 business owners that have a piece of equipment that comes
19 into the state or from out of the country that may not
20 meet the US standards, but that does meet applicable
21 safety standards from when it was built in another
22 country. We can evaluate those standards to make sure
23 that that equipment is safe. So that's the purpose of --
24 a possibility that we'll have another one.

25 I think Larry had another engineer that is applying,

1 as well.

2 MR. VANCE: Yes. Madam Chair, my name is Larry
3 Vance, V-A-N-C-E, for the record, members of the Board.

4 Yesterday we were in a meeting and there was a
5 gentleman by the name of Leonard Whalen. He's a
6 professional engineer. And Leonard has been qualified as
7 an engineer for engineering evaluation for some time, but
8 he has chosen not to advertise. So if we look at that --
9 he has asked to become public, so to speak, to be
10 listed --

11 CHAIRPERSON PREZEAU: Which is why you're announcing
12 that today?

13 MR. VANCE: That is correct.

14 CHAIRPERSON PREZEAU: I was hoping you were going to
15 say something to that effect.

16 MR. VANCE: Yes. He has asked to be added to our Web
17 site, and he has been approved in the past, but really
18 hasn't pursued any work. And he has now chosen to pursue
19 the field. And he is located in Renton, Washington. So
20 we would be -- he would actually be the fifth engineer.
21 There's two from Picatti Brothers, there's one from Power
22 Science Engineering, there's one from Parker Messana, and
23 this would be one from -- this would be Leonard Whalen for
24 five. The one Rod is talking about would be the sixth
25 engineer.

1 CHAIRPERSON PREZEAU: A much healthier number.

2 MR. VANCE: Much healthier, yes. Absolutely.

3 Absolutely.

4 CHAIRPERSON PREZEAU: Very good. Thanks, gentlemen,
5 for the update.

6 Questions, Mr. Gray?

7 BOARD MEMBER GRAY: Yes. I have a question. Does
8 the evaluation for NFPA 79 fall under the engineering
9 evaluation or do the electrical inspectors look at those?

10 MR. VANCE: They can -- the electrical inspectors
11 won't inspect to NFPA 79. Our standard is the National
12 Electrical Code. Both the engineering evaluations for the
13 testing laboratories can use an appropriate standard, and
14 NFPA 79 would be appropriate -- the proper type of
15 equipment for either body. Absolutely.

16 CHAIRPERSON PREZEAU: Beautiful.

17 Oh, Mr. Cornwall?

18 BOARD MEMBER CORNWALL: Yeah. You guys, I'm hoping
19 you can maybe just clarify because I'm not real familiar
20 with the engineer evaluation. How does that differentiate
21 from, say, a field UL.

22 MR. MUTCH: So let's take a piece of electrical
23 utilization equipment. When it's installed, it has to
24 meet the appropriate standards, United States standards.
25 And that's accomplished either -- by an accredited testing

1 lab evaluating that product and approving the manufacturer
2 to label that product. If it is modified in the field,
3 then a field representative from that testing lab can come
4 out and look at the modifications and approve it. That's
5 called a field evaluation.

6 What we're talking about with engineering evaluations
7 is equipment that wasn't built to a standard that we
8 recognize. So it's a European lathe that --

9 CHAIRPERSON PREZEAU: It has the CE label that we
10 were discussing last --

11 MR. MUTCH: Well, no. Actually, a CE label is not
12 really a label that a third party has tested saying that
13 it's -- it's a little bit different.

14 But anyway, a manufacturer from Europe builds a piece
15 of equipment to a standard that they recognize that we may
16 not recognize. So this engineering evaluation allows us
17 to approve the standard that that equipment was built to
18 even though it may not meet the US standards.

19 BOARD MEMBER CORNWALL: Good. Thank you.

20 MR. VANCE: To tailgate a little bit onto Rod, what
21 we're finding and what really prompted engineering
22 evaluations was is that North American testing
23 laboratories are in the business of developing North
24 American standards. And who is to say that a European
25 standard is lesser than a North American standard? But

1 what we were seeing was that a company goes out, spends a
2 million dollars on a lathe, for instance, a computerized
3 lathe built in Germany. They bring it over here and it's
4 installed in a machine shop in Tukwila, let's say. And we
5 go out and look at it and it's not listed. It's not
6 listed by one of the accredited testing laboratories,
7 North American testing laboratories that have sought
8 accreditation with us. So we write an electrical
9 correction.

10 A North American testing laboratory comes out and
11 looks at that piece of equipment and says, "Oh, this
12 doesn't meet North American standards." And what we were
13 seeing was is that they were having to add electrical
14 enclosures on the outside of this equipment, they were
15 having to start, for lack of a better term, cobbling on
16 electrical apparatus in order for it to meet the North
17 American standard when it was actually built to a very
18 safe European standard.

19 So to be easier for -- easier to do business, so to
20 speak, and not compromise public safety, the Department
21 went with the engineering evaluation approach. So that's
22 allowed companies to -- especially machine shops and
23 companies that buy very expensive European equipment to
24 operate here in Washington without the added expense or, I
25 mean, unnecessary cost of complying to somewhat of a

1 closed system. What this did was it allowed a system that
2 didn't compromise public safety but allowed for some
3 flexibility within the types of equipment that can be
4 used.

5 BOARD MEMBER CORNWALL: And then who would request
6 this evaluation? Is this something that would be
7 requested by the end user or the installer? Or is this --

8 MR. VANCE: That's where it kind of gets interesting.

9 CHAIRPERSON PREZEAU: Or the inspector that shows up
10 to inspect the work and says, "Whoa, whoa, whoa. This
11 isn't . . ."

12 MR. VANCE: Well, the inspector has the unfortunate
13 -- they have the unfortunate duty of informing someone,
14 you know, that there could be a potential issue, so they
15 issue a correction notice.

16 Then sometimes there's some -- it's issued to the
17 contractor that connected it. And the contractor's
18 saying, "Oh, this isn't my million dollar lathe." So then
19 they have to figure out whether it's the equipment
20 supplier, whether it's the owner of the equipment who is
21 actually going to enlist the services of either a field
22 evaluation firm, a testing laboratory, or an engineer
23 evaluator to see that the equipment is safe. So there's
24 really no answer to that.

25 CHAIRPERSON PREZEAU: So Dominic wants to jump in on

1 this.

2 BOARD MEMBER BURKE: Yeah. I just want to ask a
3 question. So the way you're explaining it, an engineering
4 evaluation, you have a professional engineer such as
5 Whalen who's going to review the standard, right, and all
6 that. So are we to assume that then that standard will be
7 adopted or are you going to -- if you're having an
8 engineer do an evaluation of a standard and they deem that
9 it's acceptable, is that standard now accepted or are they
10 going to continue to do this on a case-by-case basis even
11 though it's the same standard?

12 MR. VANCE: They're going to look -- what the
13 engineer does is they contact the manufacturer and they
14 trade information back and forth about what standard was
15 your equipment built to. And they'll say, "NFPA 79,"
16 because there are European companies that will -- if it's
17 spec, they'll build it to that. It could be some other
18 European standard. I have got -- I've got some old
19 standards in my office that it's the British standards,
20 it's the Japanese standards. There's German standards.

21 So what the engineer is doing is they're looking at
22 the standard that the equipment was built to, seeing if
23 it's a safe standard, and then seeing if there's
24 conformance between the standard and what they're actually
25 seeing with the equipment. So they're not really

1 reviewing and approving a standard. They're assuring that
2 the equipment, what the manufacturer is saying is actually
3 true. You built to a standard --

4 BOARD MEMBER BURKE: So it's in compliance with their
5 own standard.

6 MR. VANCE: Right. And then making a judgment as to
7 whether they want to put their name on there, their label,
8 assuring that the equipment is safe. Because that's what
9 the end result is if the engineer does choose to approve
10 the equipment.

11 BOARD MEMBER BURKE: It just seems like there could
12 be a possibility of adopting some of these standards in
13 the future and then you guys, the Department, still
14 handles compliance as they have for years. I'm just
15 trying to see where that might go.

16 MR. MULCH: There may be a conflict with OSHA
17 requiring an applicable US standard as far as just
18 adopting a standard that's not an OSHA-approved US
19 standard would -- may not be possible.

20 MR. VANCE: And then it gets to the -- Steve
21 mentioned training. I mean, we train on the National
22 Electric Code, the Revised Code of Washington and the
23 Washington Administrative Code. And if we were to add
24 more standards to train to -- we kind of did that many
25 years ago when we actually trained some inspectors to

1 inspect to UL 5 -- the 508, industrial control panels.

2 And what there was is that there wasn't enough demand,
3 knowledge fell off, and it was very, very difficult.

4 Some of this equipment that comes in is really
5 amazing equipment. I mean, as a contractor, you see that
6 equipment. And, you know, we're, as the Department,
7 trying to get and make sure that we're assuring public
8 safety, and it may take us literally weeks to dive into
9 one piece of equipment, you know, very complex equipment.
10 So that's why we left that to the professionals, so to
11 speak.

12 CHAIRPERSON PREZEAU: Yes, Kevin?

13 BOARD MEMBER SCHMIDT: This kind of follows along
14 Dominic. So if you certified, say, this lathe, you talked
15 about it in Tukwila, and then someone in Everett were to
16 purchase the same lathe, would that certification follow
17 the manufacturer of the device or is it going to have to
18 go through the whole process?

19 MR. VANCE: What the engineers do is they maintain a
20 list of evaluated equipment. And what these engineers do
21 is they do expedited reviews, meaning if I've done one
22 lathe, you know, I just did my homework. Now let's go
23 look at the next lathe. So they do tend to do that.
24 Normally, if you buy an XYZ lathe for a million bucks, the
25 next guy that buys the lathe, that supplier is going to

1 say, "Hey, you know, this is the way we do this." So
2 there's some continuity there with that kind of thing.

3 BOARD MEMBER BURKE: No, it doesn't carry over.

4 MR. VANCE: But it doesn't just carry over because
5 you've still got to see that if they say it's an apple,
6 then it's an apple.

7 CHAIRPERSON PREZEAU: Any other questions? Excellent
8 conversation, I think.

9 I don't know, Steve, were you done with your
10 secretary's report? And the only reason I ask is if we're
11 actually at the certification report, then Larry doesn't
12 have to play Whac-A-Mole and get up and sit back down.

13 MR. VANCE: I still have to because I left the report
14 over there.

15 CHAIRPERSON PREZEAU: Very good.

16 So, Steve, you are finished? Steve, you're done?

17 SECRETARY THORNTON: Yes.

18 CHAIRPERSON PREZEAU: When Larry's getting the
19 certification report, Board members, you should have that
20 in your packets. Previous Boards, we've established -- we
21 used to get all this stuff printed for us and then sent to
22 -- you know, and then it would come -- we'd have physical
23 copies here when we had the meetings, but we have gone to
24 -- you know, we've gone green. So if you need the
25 reports, the expectation is they're e-mailed you, and the

1 expectation is that you print them. In the event that
2 printing them causes some undue burden, you can certainly
3 notify Elissa. And if you want the reports to be printed
4 in advance, you can receive hard copies here. Just let
5 her know.

6 A couple other housekeeping pieces. You heard Steve,
7 the chief, make reports. Part of his secretary's report
8 has to do with fund balance and how many months of
9 operating cost. And, you know, for the new Board members
10 and even the Board members who weren't here at the last
11 meeting, I just want to call your attention to we had a
12 long conversation in July's meeting about accounting
13 procedure and how many months of operating capital do we
14 want to have in our general fund. And there's some
15 reasoning behind that. And if you have not read in the
16 transcript page 6 through 20 for that financial
17 background, I would strongly encourage you to do so just
18 as a matter of education. I think it's a good discussion.

19 So that and the other thing -- sorry Larry to make
20 you wait -- July we had a pretty skinny Board. We had
21 eight members of the Board present. We had lots of -- you
22 know, it is what it is. And now we have four new Board
23 members. And one of the things that we did at the July
24 meeting was we, as a Board that's subject to -- is it APA?
25 Did I get that right?

1 ASSISTANT ATTORNEY GENERAL REULAND: No.

2 CHAIRPERSON PREZEAU: Subject to the Open Public
3 Meetings Act.

4 ASSISTANT ATTORNEY GENERAL REULAND: Correct.

5 CHAIRPERSON PREZEAU: You like that better?

6 ASSISTANT ATTORNEY GENERAL REULAND: Yes.

7 CHAIRPERSON PREZEAU: We had to do a training. We
8 watched a training video for -- at our last meeting, even
9 though we only had eight folks here. And we did that in a
10 good-faith effort to comply with the statutory requirement
11 to be trained as Board members that are subject to the
12 Open Public Meetings Act. So now we have some new folks,
13 and let the record reflect that Randy Scott, even though
14 he was not a Board member, was present at that training.

15 BOARD MEMBER SCOTT: No.

16 CHAIRPERSON PREZEAU: You left?

17 BOARD MEMBER SCOTT: I left the meeting early.

18 CHAIRPERSON PREZEAU: All right. Very good. Thank
19 you for self-certifying. Thank you for self-certifying,
20 because what I would ask Elissa to do so we don't have to
21 watch the video again for the Board members that were
22 here, but, Elissa, I believe you have the ability to send
23 the link to the new Board members and the Board members
24 who were not present in July. And it's a 16-minute video.
25 It's not a huge ask, right? And what I would ask is,

1 Elissa, that you would send that link to those Board
2 members, new members who were not in attendance, and then
3 once you watch the 16-minute video, that you would
4 self-certify back to Elissa that you have completed the
5 training. Is that a reasonable request? Because there is
6 a statutory requirement for us to meet that training
7 threshold.

8 ASSISTANT ATTORNEY GENERAL REULAND: And you guys
9 only have to complete the open public meetings training.
10 You do not have to do, although you can, the open public
11 records training. And the link may have both of those on
12 there.

13 CHAIRPERSON PREZEAU: So, Elissa, if you would send
14 -- identify the name of the video in the e-mail when you
15 send the link, because you only have to watch one and it's
16 16 minutes long.

17 MS. ZYSKI: And for the absent members from July who
18 did receive that link, I can resend it again. I think
19 everybody got back to me that they did take it. I have a
20 list back at my desk. But for the new members, I will
21 make sure to get that forwarded to them as well.

22 CHAIRPERSON PREZEAU: Very good. Fantastic. so
23 cross that off.

24 ///

25 ///

1 Item 5. Certification/CEU Quarterly Report

2

3 CHAIRPERSON PREZEAU: So, Larry, let's talk about
4 examinations.

5 MR. VANCE: Examinations. Well, I think Elissa
6 forwarded an exam report. This is a report we've been
7 looking at for, I think, the last three Board meetings or
8 so. It's a Statistic Summary by Attempt report. And what
9 it shows is it shows that -- for the new Board members,
10 this is the percentage of folks who sit for the exam and
11 pass the exam in one sitting, so to speak, and looking at
12 the number of attempts.

13 And something just struck me here that we have
14 somebody here -- no, we do not. I'm reading the wrong
15 column. I am going to ask the testing agency to see if
16 they can put the attempts in order because it makes it a
17 little bit interesting. That's the left-hand column.

18 CHAIRPERSON PREZEAU: That would be really great.

19 MR. VANCE: That would be kind of neat, yes.
20 Otherwise, it just makes it too interesting to read
21 sometimes.

22 But as you can see, there are people who struggle
23 with an open-book examination, and it's an open book where
24 you can bring any reference material, any copyrighted
25 reference material, and it's really an examination that's

1 about one's ability to access information, know where to
2 look it up. It's not a memory test, so to speak. And I
3 think it's on page 8. No. How about page 4. Page 4.

4 So as we can see, if we look down here and find
5 Attempt No. 1 --

6 CHAIRPERSON PREZEAU: Are you talking about the
7 general, the 01?

8 MR. VANCE: I'm talking about the general electrical
9 examination, the journey level examination.

10 But there were 358 passed the first attempt. That's
11 passing all sections. 53 percent of the time somebody can
12 pass an open-book test.

13 If we look at our other exam report, and I think I
14 might need to start including the other exam report just
15 to kind of show another side of this, but we look over the
16 years at the other exam report, and it seemed that about
17 73, 74 percent of the time, people can pass one section of
18 the exam. And that was pretty consistent with both the
19 RCW/WAC side and the NEC side for a regular electrical
20 examination. But the --

21 CHAIRPERSON PREZEAU: Larry, is that true -- I'm
22 sorry. But is that true even in the administrative exams?
23 Is that only for --

24 MR. VANCE: That's not the administrator's exam,
25 because anybody can walk off the street and take it. I

1 think it's lower. I'm just going by memory. I'd have to
2 look at it.

3 But one of the things that's really troubling,
4 there's a lot of conversation today about residential
5 electricians. And if we look at residential electricians,
6 which are the 02 electricians, 22 percent of the time they
7 can pass an open-book test. So that's 22 percent of the
8 people that are out here wiring the houses that we live in
9 that are able to sit for an open-book test and take the
10 examination. So that's a troubling number and been a
11 troubling number for a long time. I know that there are
12 some things that stakeholders have done to try to help
13 that, like visible display of certification, which helps.

14 CHAIRPERSON PREZEAU: Increased class -- basic
15 classroom training, related supplemental instruction.

16 MR. VANCE: Increased basic classroom training.
17 We're still at a great deficit to our neighboring states
18 who have 144-hour-a-year requirement for education for
19 those learning the electrical construction trade. We're
20 nowhere near that. We're at 24 hours for a total of
21 48 hours every two years. So we're -- you're contrasting
22 24 hours with 144 hours for our neighboring states. Maybe
23 not somewhere where we're moving the needle yet, so to
24 speak.

25 CHAIRPERSON PREZEAU: I mean, I like the conversation

1 that we're having, and I do think when it comes to the
2 pass rate for residential electricians because of the
3 work, the number of them, right, and the amount of work --
4 residential construction work that's done and we occupy,
5 then it may be more compelling to have that conversation
6 regarding that. But certainly, initial pass rate of
7 22.1 percent is enviable to some of the other
8 subspecialties. And what I mean by that is if you look at
9 the first time pass rate for an 06B HVAC-R restricted
10 examination, their first time pass rate is 5.71 percent.
11 But there were only 35 people in that, right? So it's not
12 a huge number of people, but the pass rate -- imagine your
13 reaction if your child came home with a test score of
14 5.71 percent.

15 Additionally, 07A, nonresidential lighting
16 maintenance, 14.29 percent initial pass rate; 07B,
17 residential maintenance, 5.88 pass rate; 07D, appliance
18 repair, 10 percent pass rate. Be clear, there are some
19 other subspecialties -- 07C, nonresidential maintenance,
20 they had one person take that test and pass it, which this
21 one I was actually going to ask you about this 07C. Have
22 you looked at this report? Look at page 7. Because it
23 indicates that they have a -- that one person took the
24 test, they had 100 percent pass rate. So if they have
25 100 percent pass rate on the first attempt, why do we

1 still have five attempts to take the test then? Is that
2 other folks that failed outside of the date range of this
3 report?

4 MR. VANCE: No. Let's see. I'm looking at one
5 attempt, one first-time attempt.

6 CHAIRPERSON PREZEAU: 100 percent passed.

7 MR. VANCE: And 100 percent passed, yes.

8 CHAIRPERSON PREZEAU: So then why do we have five
9 attempts?

10 MR. VANCE: Well, then we have somebody who took the
11 -- if we look at Attempt No. 4, one failed.

12 BOARD MEMBER BELISLE: It's their fourth attempt.

13 CHAIRPERSON PREZEAU: No. I get that. But what I'm
14 saying is if the first attempt you had 100 percent of the
15 people that took the test the first time pass, how can you
16 have five additional -- four additional attempts if
17 everybody passed? Unless somebody took -- other people
18 took the test and failed outside of the date range of this
19 report. Am I seeing that correctly?

20 BOARD MEMBER BURKE: It should say 20 percent.

21 MR. VANCE: I think that if we look at it as that
22 there is -- if we add up all of the numbers there in the
23 left-hand column under "Attempt," we would see that five
24 people walked in to take the examination. One of them, it
25 was their first time; another, it was their second time;

1 another, their third, their fourth, their fifth.

2 CHAIRPERSON PREZEAU: Yeah. No. I understand that.
3 We're -- yeah. I'm good. I'm good.

4 MR. VANCE: It's just based on the attempt.

5 I don't want to overstep, but Rod Mutch may have an
6 update on the examination.

7 CHAIRPERSON PREZEAU: I don't know how that's
8 overstepping. Come on down.

9 MR. MUTCH: Okay.

10 BOARD MEMBER BURKE: You didn't have to leave,
11 either.

12 CHAIRPERSON PREZEAU: Did you hear that Rod? You
13 didn't have to leave.

14 MR. MUTCH: As you know, we adopted the 2014 National
15 Electrical Code with an effective date of July 1st. Our
16 examinations are all based on the 2008 National Electrical
17 Code. And that's pretty typical. In the past, when we've
18 adopted a new code, it's been a little bit of a lag to get
19 the examination updated for the new code. So that's what
20 we're in the process of doing now.

21 I am going through -- and I've got all the exam
22 questions from our testing contractor, PSI, and I'm going
23 through each question and updating each question. Now,
24 the Board actually does have a little bit of
25 responsibility in creating an exam and collaborating with

1 the Department in making up the exam. In the past, due to
2 the confidential nature of our exam questions, the
3 Department has gone through and updated the Board on our
4 efforts to update the questions. So that's kind of the
5 process that I'm in right now. I've got the questions.
6 I'm going through each one of them. There's about 2,000
7 exam questions.

8 And so I'd like to get them updated by the end of the
9 year to present to the exam contractor. They have to go
10 into the system and modify each question in their system.
11 So I'm about 32 percent of the way through that.

12 CHAIRPERSON PREZEAU: About.

13 MR. MUTCH: About.

14 CHAIRPERSON PREZEAU: Have you broken down and picked
15 up the phone and tried to get ahold of Doug Erickson?

16 MR. MUTCH: Well, no, I haven't.

17 Most of the changes are minor. Maybe 10 percent of
18 the questions have a reference change. Some of the
19 questions are significantly changed. Arc fault
20 requirements, for example. Anything new that came into
21 the code, we're updating the exam questions to reflect
22 that.

23 I am not, at this point, creating new questions based
24 on new requirements of the code. That's something we can
25 talk about, if you like. But I'm going through the

1 existing questions, and if there are cases where a
2 question no longer applies, we're deleting that question
3 because it's no longer in the code.

4 So that's kind of the status of where we're at.

5 BOARD MEMBER BELISLE: Rod, doesn't PSI offer the
6 testing nationwide? I guess I kind of had it in my mind
7 that they would already have a 2014 test bank of questions
8 that had been brought up to code. Apparently not.

9 MR. MUTCH: Those are specifically our questions. So
10 Washington State has their own questions and the Board and
11 the Department has control of those. So we present those
12 to the testing contractor, and they administer the test.

13 It's pretty easy to change one. I found one the
14 other day in going through that the answer was actually
15 incorrect. So I called up PSI and they changed it right
16 there on the spot.

17 CHAIRPERSON PREZEAU: And just the background is in
18 addition -- I'd like to have this. The reason why you're
19 getting a report on examinations and update on compliance
20 with the bank of questions with the newly adopted 2014
21 code is the Electrical Board is principally an advisory
22 board, but the one piece of the statute and the rule that
23 we have a terrific amount of ownership over is education
24 and the examination. And so that's why you're -- and so
25 Doug Erickson, the name I mentioned previously, was a

1 technical specialist who we used to have the -- our
2 partner in administering journey level -- and especially
3 journey level specialty level testing was Laser Grade, and
4 I actually took my 01 certification examination when Laser
5 Grade was the administrator. And when I was going through
6 the test, I figured out pretty quickly that -- not the WAC
7 and RCW section, but the NEC section, all the questions
8 were asked in order of article the way they exist in the
9 National Electrical Code. So, in fact, there was a
10 question about an oil switch, and I had never heard of an
11 oil switch. But the question before that was in
12 appliances and the question after that was in motors. And
13 I was like, you know it's between here somewhere, and I
14 was able to find -- right? So clearly, there was some
15 additional high jinks that actually could happen. It was
16 actually discussed at the last meeting as well.

17 And so we, not too long ago and with the partnership
18 of the Department, really elevated the standards in our
19 examination both for 01 and specialty electricians of --
20 and Doug Erickson was the one principal person, probably
21 not the only, but principal person that built that 2,000,
22 2,500 bank of exam questions.

23 And it's funny. Even if you haven't talked to him,
24 you were channeling him. Because I remember him saying
25 things like, "I'm about 32 percent complete with this

1 project." And then we launched -- and with PSI, and so
2 when somebody goes in to take a general journeyman or
3 specialty electrician examination, it is quite -- you
4 would expect that if I'm sitting here taking the test and
5 everybody here is taking the same test or at least the
6 same -- seeking the same certification, none of our exams
7 would look anything the same.

8 And then we were able to provide that access to folks
9 that -- whether they reside in Oregon or they reside in
10 Kalamazoo, Michigan, they can -- PSI has the ability to
11 proctor those exams, so it creates an opportunity for
12 worker portability. So people who live in Oregon or
13 Kalamazoo, Michigan can seek the opportunity to sit for
14 that examination, actually get their certification before
15 they have any expense of traveling here, seeking work
16 opportunity. So really, really -- that's good work.
17 That's really, really good work.

18 Anything else, gentlemen?

19 MR. VANCE: Just tailgating on what you were talking
20 about people seeking -- people coming to Washington. We
21 have had a little bit of correspondence from different
22 groups that are concerned about electrician's ability to
23 rapidly certify their work in Washington. And there are
24 some requirements that were passed by the Legislature,
25 specifically I think it's RCW 19.20.205 which requires

1 proof of basic classroom education. And that kind of
2 throws a little bit of a curve in people from coming out
3 of state.

4 One of the things that we're doing to help those
5 groups and help everyone is we're enhancing our Web pages
6 to list off the kinds of things that would prove that that
7 they would submit with their application such as, you
8 know, have you completed an electrical apprenticeship. Or
9 you could say, "I'm an 01 electrician and I have at least
10 96 hours of basic classroom education that's required by
11 the Revised Code of Washington," or "I completed a trade
12 school or a community college training program."

13 What we have right now is that we know this
14 information. We want everyone else to know this
15 information, so we're working on a little bit of a
16 project, enhance some Web pages there so that anyone going
17 to those pages trying to come into this state would
18 rapidly be able to figure out what they can show to come
19 here.

20 CHAIRPERSON PREZEAU: Yeah. In my experience, you
21 know, the work that I do, I travel to Alaska and Oregon
22 and California and Nevada and sometimes -- not very often,
23 but Hawaii. And the electricians that I encounter, when I
24 talk to them about electrical licensure requirements or
25 certification requirements for workers, they pretty much

1 all -- many of them know about L&I's Web site and have
2 navigated it and have told me how much information they
3 have been able to find on the Web site. So I just wanted
4 to share that with you because I think folks that -- folks
5 are looking at it. So anything that -- any effort -- any
6 initiative that you will take to make it even easier and
7 promote it, I think, is definitely good for the industry.

8 Anything else for Larry and Rod?

9 Thank you, gentlemen. Appreciate that.

10 Before you get super-duper excited about adjournment,
11 we have two things. One is public comment, but don't
12 worry. And two is we had a discussion at last quarter's
13 meeting about making an amendment to the bylaws. And the
14 Department actually had offered a proposed amendment to
15 the bylaws, and we were going to look at it and maybe take
16 action at the last meeting. And then we realized that
17 there -- and you have current copies of the bylaws with
18 you?

19 ASSISTANT ATTORNEY GENERAL REULAND: I do.

20 CHAIRPERSON PREZEAU: For all the Board members?

21 ASSISTANT ATTORNEY GENERAL REULAND: I have -- can I
22 just jump in?

23 CHAIRPERSON PREZEAU: Please. Yes.

24 ASSISTANT ATTORNEY GENERAL REULAND: Remember I said
25 earlier in terms of the authority of the secretary to make

1 decisions in terms of timeliness, that was sort of read at
2 the last meeting in a proposal made by the Department.

3 But I think, based on our current practice, that proposal
4 has now been withdrawn, correct? And that caused me to go
5 in and sort of look at some of the bylaws. And also, I
6 get called by attorneys all the time, "How do we do this?
7 How do we have to do something?" So one of the things I
8 am going to sort of discuss with the Board at some point
9 is our procedural WAC 296-46B-995 is a nightmare to
10 navigate for appellants and for this process. But we've
11 also -- I looked at the bylaws, and what I've handed out
12 to you is the bylaws.

13 And then you can see that I bolded some suggested
14 changes that I just wanted you guys to consider. We don't
15 have to have any discussion about it today.

16 I did notice that there was an incorrect cite in the
17 current bylaws under "Meetings." RCW 30.030 doesn't
18 exist, so we need to take that out of there.

19 So I was thinking in terms of a couple problems we
20 have, clarifying the Chair's role as the presiding judge.
21 What I have suggested in language is just what the APA
22 provides at -- the APA is the Administrative Procedure Act
23 that we operate under, what that does already provide for
24 the presiding officer to do.

25 The other thing that we come up a lot about, and

1 Elissa and I have these conversations, Tracy and I have
2 these conversations, but the rule currently provides that
3 you have to file documents 45 days ahead of time. And
4 sometimes appeals come in and they're supposed be set at a
5 meeting, but it's less than 45 days. Well, the 45 days
6 was before we had electronic e-mail and all of these
7 different things, and so sometimes it is appropriate to --
8 not the underlying jurisdictional timelines, but sometimes
9 it is appropriate to sort of skew those timelines. And so
10 I put some language in there for your consideration.

11 I did get copies of other boards sort of bylaws, and
12 I thought it would be a good opportunity maybe to get you
13 all thinking about what you want in your bylaws. What do
14 you think should be there? They are the internal
15 operating procedures for this Board. And I don't think
16 we've looked at them in a long time, and I think it would
17 be a good opportunity to help clarify some things. So I
18 just came up with a couple of suggestions based on what
19 I've seen, and I'm just passing that out for you guys to
20 take with you and think about.

21 CHAIRPERSON PREZEAU: So just to tie onto that is in
22 our existing bylaws, it has a process, as you would
23 expect, for amendments. And it says, "The bylaws may be
24 amended by a simple majority of the Board, provided the
25 amendment has been read at the previous meeting or mailed

1 to the Board members 20 days prior to the meeting at which
2 the voting will occur."

3 And so the reason we didn't act on the Department's
4 proposal in July was because the proposed amendment was
5 not read at the previous meeting, and, in fact, the copy
6 was sent to us 17 days in advance of the meeting. So we
7 would have been in violation of our own bylaws under the
8 amendment deal to amend the bylaws. But it launched this
9 broader conversation, as Pam just so eloquently described.

10 And so Pam consulted other boards and practices and
11 relayed these amendments including striking -- because
12 this language is you striking that -- is the result or the
13 culmination of a pretty good amount of research on the
14 part of our advising counsel in terms of Article 5, Duties
15 of Officers. So I would encourage the Board to -- we want
16 the record to reflect that where there are proposed
17 amendments for Board members' review, and I would very
18 much like it to be on the agenda in January's meeting
19 about if we're going to take action and what action that
20 would be regarding the proposed amendments, Article 5,
21 Duties of Officers D as in dog and E, and then Article 6,
22 Meetings, which these are not enumerated, which probably
23 should be enumerated and consistent. So I'm saying
24 Article 6, Meetings, so that would be A, C, D, E, as those
25 edits should be done, right, so consistent with the

1 document.

2 So again, no need to have conversation today. In
3 fact -- oh. What Alice is indicating to me is that the
4 inconsistency of labeling occurs throughout this document.
5 Probably it should be cleaned up -- formatted. The
6 formatting should be universal. And that's pretty easy.

7 So there is no need for discussion on those since we
8 are meeting our threshold of at least sharing with the
9 Board members 20 days in front, and so just know that in
10 July we will be having a conversation about the specifics
11 of the merits of the proposed amendments offered to the
12 Board members at the recommendation of counsel.

13 Any questions about the bylaws? Oh, extra copies.

14 ASSISTANT ATTORNEY GENERAL REULAND: Oh, I
15 overcompensate with paper.

16 CHAIRPERSON PREZEAU: That's why we love her. One of
17 the many reasons we love her.

18 ASSISTANT ATTORNEY GENERAL REULAND: I love paper.

19 CHAIRPERSON PREZEAU: I love paper, too.

20

21 Item 6. Public Comment Regarding Items Not on the Agenda

22

23 CHAIRPERSON PREZEAU: Okay. So, the last agenda item
24 is public comment regarding items not on the agenda. Let
25 the record reflect no one has signed in on the sheet for

1 individuals requesting to speak, but would ask -- offer
2 the opportunity for anyone in attendance who wanted to
3 address the Electrical Board on items not on the agenda.
4 Going once, going twice, three times.

5

6

Motion

7

8 CHAIRPERSON PREZEAU: So with that, unless there are
9 any additional comments, questions, reports, the Chair
10 would love to entertain a motion to adjourn.

11 BOARD MEMBER: Motion.

12 BOARD MEMBER SCOTT: Second.

13 CHAIRPERSON PREZEAU: It's been moved and seconded to
14 adjourn. All those in favor, signify by saying "aye."

15 THE BOARD: Aye.

16 CHAIRPERSON PREZEAU: Opposed? Sorry. We're
17 adjourned.

18

19

Motion Carried

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21

(Whereupon, at 12:02 p.m.,
the proceedings adjourned.)

22

23

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