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DEPARTMENT OF LABOR AND INDUSTRIES

STATE OF WASHINGTON

ELECTRICAL BOARD MEETING

TRANSCRIPT OF PROCEEDINGS

Thursday, January 31, 2019

BE IT REMEMBERED, that an Electrical Board meeting was held at 9:00 a.m. on Thursday, January 31, 2019, at the Rhodes Center, Orcas Room, 950 Broadway, Tacoma, Washington, before CHAIRPERSON TRACY PREZEAU, BOARD MEMBERS JASON JENKINS, DAVID WARD, JOHN BRICKEY, ERICK LEE, MIKE NORD, DAVID CORNWALL, DYLAN CUNNINGHAM, DON BAKER, RYAN LaMAR, BOBBY GRAY, KEVIN SCHMIDT, DOMINIC BURKE and SECRETARY/CHIEF ELECTRICAL INSPECTOR STEPHEN THORNTON. Also present was ASSISTANT ATTORNEY GENERAL PAM THOMURE representing the Board.

WHEREUPON, the following proceedings were held, to wit:

Reported by:
H. Milton Vance, CCR, CSR
(License #2219)

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

Thursday, January 31, 2019
Tacoma, Washington

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Thursday, January 31, 2019
Tacoma, Washington

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PROCEEDINGS

1

2

3

CHAIRPERSON PREZEAU: So good morning, everybody.

4

It's 9:05, and I would like to call the January 31, 2019,

5

Electrical Board meeting to order.

6

7

1. Approve Transcripts from October 25, 2019,

8

Electrical Board Meeting

9

10

CHAIRPERSON PREZEAU: So the first item of business

11

is to approve the transcripts. And before the Chair

12

entertains a motion, I would like to make a correction in

13

the transcript.

14

Sorry, Milton.

15

On page 23, line 21, it reads: Department -- it says

16

"e-certified." It should say "Department decertified the

17

independent electrical contractors of Washington" I

18

want to make sure that got in the record.

19

So with that, any other amendments to the transcript?

20

Hearing none, the Chair would entertain a motion to

21

approve the transcripts as amended.

22

23

Motion

24

25

BOARD MEMBER JENKINS: Motion to approve.

1 CHAIRPERSON PREZEAU: Second?

2 BOARD MEMBER NORD: Second.

3 CHAIRPERSON PREZEAU: So it's been moved and seconded
4 to approve the transcripts. Any discussion? All those in
5 favor, signify by saying "aye."

6 THE BOARD: Aye.

7 CHAIRPERSON PREZEAU: Opposed? Very good. Motion
8 approved. The transcripts approved.

9

10 Motion Carried

11

12 CHAIRPERSON PREZEAU: So Steve, you're up.

13 Oh, and perhaps before, Steve, you give your
14 Departmental/Legislative Update, I would very much like
15 to introduce -- we have a new appointed Electrical Board
16 member. It's Erick Lee. He is replacing Janet Lewis in
17 her long term of serving electricians on the Board. And
18 so Erick Lee is representing electricians.

19 And so as customary, I would like all of us to give
20 introductions and what position you occupy on the Board.
21 And Dominic, if we could begin with you.

22 BOARD MEMBER BURKE: Dominic Burke, Burke Electric,
23 contractor seat.

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

1 BOARD MEMBER GRAY: Bobby Gray, electrical contractor
2 seat.

3 BOARD MEMBER LaMAR: Ryan LaMar, CenturyLink,
4 telecommunications.

5 BOARD MEMBER BAKER: Don Baker, contractor seat.

6 BOARD MEMBER CUNNINGHAM: Dylan Cunningham, M.W.
7 Consulting Engineers, engineering seat.

8 BOARD MEMBER CORNWALL: Dave Cornwall, manufacturers
9 seat.

10 BOARD MEMBER NORD: Mike Nord, telecommunication
11 workers seat.

12 ASSISTANT ATTORNEY GENERAL THOMURE: Pam Thomure,
13 A.G.'s seat.

14 CHAIRPERSON PREZEAU: Tracy Prezeau, Chair and
15 electrician seat.

16 Erick Lee ...

17 BOARD MEMBER LEE: Erick Lee, electrician seat.

18 BOARD MEMBER BRICKEY: John Brickey, city
19 representative representing WABO, Washington Association
20 of Building Officials, and cities with jurisdiction.

21 BOARD MEMBER WARD: Dave Ward, utility seat.

22 BOARD MEMBER JENKINS: Jason Jenkins, electrical
23 seat.

24 SECRETARY THORNTON: Steve Thornton. I'm the Chief
25 Electrical Inspector.

1 MS. RIVERA: Beth Rivera, secretary assistant.

2 CHAIRPERSON PREZEAU: Terrific. Okay.

3

4 Item 2. Departmental/Legislative Update

5

6 SECRETARY THORNTON: All right. Good morning, Madam
7 Chair, fellow Board members.

8 For the Department update, legislatively there are
9 only a couple of bills that we've seen so far that have
10 any impact to us. They're both submitted by the utility.

11 One deals with equipment mounted on their poles and
12 is designed to limit the jurisdiction on those poles.

13 The other one had to do with meter bases and the
14 types of equipment that you might be able to mount between
15 the meter and the meter base.

16 Those are the two that we've seen so far.

17 More internally, our virtual inspections project is
18 moving right along. We've done about a little over 500
19 inspections with that process. We've got about 40, 39
20 contractors on board. Last month in January alone, we did
21 130. So it's gradually growing. It seems to be popular
22 in certain areas, not quite as popular in others. It has
23 some challenges in some areas. The only negative side of
24 it is some haven't particularly cared for how Skype works,
25 and that's how we interface with their phones and such.

1 But other than that, it's been very helpful for everybody.

2 A little time on the contractors' part to get up to speed.

3 We're going to do the -- go through the WAC rules
4 today. But maybe next time or next meeting if we have
5 time, we'll actually do an inspection for you and show you
6 how that works.

7 From a electronics point of view, our electronic plan
8 review is progressing along as all the reviewers now are
9 doing plans electronically. It doesn't save us much time
10 in the office actually doing the review, but it certainly
11 speeds up the process of shipping the plans back and
12 forth. Rather than, you know, rolling them up and boxing
13 them up and paying postage and dropping them in the mail,
14 we just send them back, and you can make your corrections
15 and then send them back electronically just like the rest
16 of the world operates. So that will be a big help when we
17 get all the bugs worked out of that.

18 From a hiring standpoint, we're still struggling to
19 fill our vacancies. We have -- we're up to 19 vacant
20 positions now. We're having a hard time, you know, hiring
21 just to cover retirements without making any headway.
22 We're always recruiting, interviewing, hiring. And if we
23 can find a good candidate, we hire him where he's at. If
24 it's not where we need him, we'll get somebody else there.

25 We're rotating staff, our ECOPE people, around to

1 cover vacancies. With that many vacant positions, we have
2 to be a little inventive on how we get to places.

3 So our program specialists that we've talked about
4 quite a few times, they're in the process of doing
5 standard work to try and keep them on the same page doing
6 the same work so that you guys get the same service no
7 matter where you go in the state.

8 And that's pretty much it for the Department updates
9 unless you have some questions.

10 CHAIRPERSON PREZEAU: Don.

11 BOARD MEMBER BAKER: So if you could elaborate a
12 little bit on what types of inspections you're doing
13 virtually and how you're notifying contractors?

14 SECRETARY THORNTON: Right now -- it started out that
15 we were trying to do the updates and getting people on
16 board virtually. Now if we get the chance, we're actually
17 going to go to the contractors and help them. It's a
18 little more work on the contractor's side of it than what
19 everybody thought when they heard of this idea and
20 through, Oh, wow, I'm just going to start doing them. You
21 have to set up accounts. And, you know, there's certain
22 ways to do it that are better than others.

23 So right now, we're not putting too many limits on
24 what we're looking at. We're not going to do service
25 approvals. And, you know, getting stickers there is maybe

1 one of the bigger things we've found on our end.

2 We try to let people know that they can go on-line
3 and print, you know, the results because it goes in
4 immediately.

5 And load banks are popular. Those are once we do
6 virtual inspections, if we need to late and early -- we
7 try not to do them at 2:00 in the morning. Don't like to
8 get anybody up and then tell them, Oh, go back to bed and
9 get two hours sleep, then come back to work. But we'll do
10 them, you know, later in the evenings and early in the
11 morning and just start somebody early and let them off
12 earlier, whatever we need to do.

13 HVAC has been something that helps us out as much as
14 it does you guys because it eliminates us having to get
15 access to customers' homes. But one of the drawbacks
16 there is customers don't necessarily like you taking
17 pictures inside of their house what they're not there. So
18 even though we don't keep them, it's just live, and when
19 you turn your phone off, it's gone. There are people --
20 my wife would be one of them -- that says you're not going
21 to bring a camera in my house when I'm not there. But it
22 certainly saves times.

23 One of the better ones that I watched Tony do was a
24 HVAC air conditioner add-on. And the kid -- of course, he
25 was a younger kid. He's pretty tech savvy. While he was

1 picking his tools up, he was getting his inspection and,
2 you know, didn't have to open a disconnect or anything.
3 He was ready when he called us and did the inspection.
4 Then he put his cover on and, you know, while he was
5 walking around showing us what he was doing, he was
6 picking up his tools. And by the time he had his
7 approval, he was ready to go.

8 So if you're organized and you do it enough, it could
9 be very valuable.

10 BOARD MEMBER BURKE: Has the State coordinated with
11 any of the utilities and informed them that this is
12 happening so that -- like the stickering issue where you
13 can go on-line and see that it's been approved and they
14 can find it?

15 SECRETARY THORNTON: And we have. And we've had
16 those conversations for some time. Some don't -- you
17 know, they're either spoiled with the stickers and -- but
18 yeah, how we're going to do stickers if we do them
19 virtually, that's why we haven't done services as such up
20 till now. With technology the way it is, we have to be
21 able to figure that out eventually.

22 So I don't know that we'll get to where we're going
23 to do them all that way, but we've had some good success
24 on cell towers, you know, places that are tough for us to
25 get to while you're there doing the work, if you have

1 coverage, we can look at it without having to waste
2 everybody's time.

3 BOARD MEMBER BURKE: Like getting the utility to find
4 it on-line so that they'll energize and --

5 SECRETARY THORNTON: And right now we're probably
6 calling them and letting them know. But we can't spend
7 all day on the phone either.

8 So they'll need to grow with us and learn how to do
9 those things or be willing to accept it as much as
10 anything.

11 BOARD MEMBER BAKER: There was some talk about
12 starting to do ditch cover inspections. Have you guys
13 approached that or ...

14 SECRETARY THORNTON: We've done ditch covers and --
15 Have we done any slabs, Tony?

16 "TONY": Yeah.

17 SECRETARY THORNTON: Yeah, slab covers, concrete
18 pours, driveway crossings, you know. It worked well
19 anyplace where you have equipment sitting waiting for us
20 to get there for ditch cover, that kind of stuff.

21 CHAIRPERSON PREZEAU: I think the sticker thing is
22 pretty easy to figure out. If you can -- the IT
23 department, right? Once the inspection has been approved
24 like say for a service, and part of the approval is that
25 it actually produces electronically the format for a

1 sticker, and the customer prints that on a label.

2 SECRETARY THORNTON: Well -- and you could go
3 on-line right now as the customer and print that and put
4 it in your panel.

5 And that's the way we used to do it. We just signed
6 a little -- it was a 4x6 piece of paper, and it just laid
7 in the bottom of the panel. The utility would see it and
8 know that it had been inspected. Just get used to doing
9 it the way we used to.

10 BOARD MEMBER BURKE: (Inaudible.)

11 SECRETARY THORNTON: Yeah. And their protocol that
12 we'd have to see a sticker. Maybe all they need to do is
13 change from sticker to notification or approval, something
14 of that nature.

15 BOARD MEMBER WARD: Madam Chair?

16 CHAIRPERSON PREZEAU: Yes.

17 BOARD MEMBER WARD: One of the bills that Steve had
18 mentioned is House Bill 1594 which is actually being heard
19 this morning. And it does provide clarification for the
20 Department.

21 And I don't know -- this is a question for my fellow
22 Board members. Do we want to take a position of support,
23 neutral, opposition around it? I'm just hearing back from
24 Dave Hanson who's down there that utilities are all in
25 support it appears. There's been no opposition statements

1 being made.

2 And I don't know. Larry Vance is well versed on
3 what's going on with that and the clarification to provide
4 the Department if we'd like to hear a little bit more
5 about that. I don't know typically what's done.

6 CHAIRPERSON PREZEAU: Well, usually what is done is
7 -- or historically what has happened is, you know, this
8 body has not routinely entered into the political
9 legislative arena with a formal position. We certainly
10 did with respect to the class and compensation case for
11 compensation for the state inspectors when that process
12 was going through the budgetary process. And when it came
13 to -- you know, there's been other years where the
14 legislative update was 15 bills that had a direct impact
15 on the Department and the program. And what we typically
16 have done in the past is I've appointed a subcommittee to
17 sort of keep tabs on that legislative process, and they
18 were empowered in the event that -- to go on record or to
19 engage in that political legislative process typically
20 through writing letters in opposition or writing letters
21 of support.

22 And we -- I'm a little bit -- this Board historically
23 has been kind of -- we're very judicious in how it enters
24 into that political legislative arena. And I certainly,
25 you know, welcome the discussion of greater understanding.

1 And if we want -- if Board members -- if Larry is prepared
2 to speak on the bill from a mechanic's point of view or
3 give us some greater detail, if the Board members want to
4 have that conversation, and then depending on how that
5 goes, if the, you know, the majority of the Board wants to
6 officially weigh in, then -- you know, it's up to the
7 members of the Board.

8 So do Board members want to have a more full
9 conversation about House Bill 1594?

10 I kind of -- it doesn't appear that there's
11 overwhelming support for that.

12 This is a long session, the legislature this year.
13 Are we in a short session or long session? Will it be --
14 if it follows its regular schedule, will it be adjourned
15 by the time we have our next Board meeting?

16 SECRETARY THORNTON: I doubt it.

17 CHAIRPERSON PREZEAU: Regular schedule?

18 BOARD MEMBER WARD: We could keep track of that and
19 decide maybe next time.

20 CHAIRPERSON PREZEAU: Are you comfortable with that
21 then?

22 BOARD MEMBER WARD: Oh, yeah. Thank you.

23 CHAIRPERSON PREZEAU: Well -- and the other thing if
24 I'm, sort of just with your statement, if every utility in
25 the state of Washington is --

1 BOARD MEMBER WARD: It sounds like it's going --

2 CHAIRPERSON PREZEAU: It sounds like they probably
3 don't need any help from us perhaps.

4 BOARD MEMBER WARD: Yeah. Thank you.

5 CHAIRPERSON PREZEAU: Thank you.

6 So any more -- I have a couple of questions for
7 Steve.

8 Last quarter, David Puente gave us a pretty -- or
9 gave us, you know, an outline about this pretty massive
10 overhaul to the State's workers' compensation system,
11 right? It's got a \$300 million price tag, and it's going
12 to have an increase of full-time employees.

13 Do you have an update on that or ...

14 SECRETARY THORNTON: I really don't.

15 CHAIRPERSON PREZEAU: Because you're likely not
16 directly involved with that.

17 SECRETARY THORNTON: No. That's somebody else's
18 realm.

19 I haven't heard anything that that has slowed down,
20 so I would have to assume that it's still in the budget
21 packages.

22 CHAIRPERSON PREZEAU: And then the only other
23 question I have is he also reported that in conversations
24 with -- you know, internal conversations, an idea cropped
25 up of potentially using the electrical program's database

1 of certificate holders in terms of direct mail to say
2 every yellow-on certificate holder making sure -- reaching
3 out to them and saying, Hey, there's an opportunity to go
4 work for the State. I was -- it didn't catch my attention
5 when we were -- when David mentioned that in October when
6 I was reading the transcripts. I was -- I don't know if
7 that went forward. I'd be curious to know. Because it
8 was my understanding that even though, you know,
9 continuing education providers oftentimes use that same
10 sort of direct mail process. But I was curious if that
11 went forward. Because I thought there was some
12 prohibition on using that database for hiring purposes.

13 SECRETARY THORNTON: And that statement would raise
14 a flag in my mind to I'd better find out before we do that
15 for that very same reason. To my knowledge it hasn't gone
16 forward.

17 We are looking at putting notifications on our
18 different Web sites, trying to make it easier for people
19 to see that we're in need of inspectors. Most of our best
20 attempts are individual outreach by the inspectors
21 themselves while they're in the field.

22 CHAIRPERSON PREZEAU: Perfect.

23 Any other questions for Steve under Departmental/
24 Legislative Update.

25 Thank you, Steve.

1 SECRETARY THORNTON: Thank you.

2

3 Item 3. Appeals

4

5 CHAIRPERSON PREZEAU: So with that, we are under
6 appeals.

7

8 Item 3.A. Black Diamond Electrical Contracting
9 and Benjamin J. Shamp

10

11 CHAIRPERSON PREZEAU: And just for the record, as you
12 can see in the matter of Black Diamond and Benjamin J.
13 Shamp, Pam presented me with a proposed final order
14 remanding that appeal back to the Office of Administrative
15 Hearings.

16 And so Pam reviewed the order for accuracy and
17 advised me to sign it. So I signed that order this
18 morning.

19 So that matter is completed in terms of our agenda
20 for today. It was an agreed final order.

21

22 Item 3.B. Kirby Electric., Inc., and Douglas E. Kirby

23

24 CHAIRPERSON PREZEAU: And so with that, we are under
25 appeals, sub-heading B, which is the matter of Kirby

1 Electric, Inc., and Douglas E. Kirby. It's my
2 understanding the parties in the matter are present this
3 morning.

4 So Mr. Lees, I know that you've been through this
5 process before. And Ms. Balch, I'm going to go through an
6 introduction and a process announcement. And then I would
7 ask when you introduce yourselves, if you would spell your
8 name for our court reporter when you get to that point.

9 Thank you.

10 So good morning. My name's Tracy Prezeau. I'm the
11 Chair of the Electrical Board. The matter before us today
12 is an appeal in the matter of Kirby Electric, Inc. -- oh
13 excuse me.

14 Before we get started, it is my understanding that
15 one of our Board members feels necessary to recuse himself
16 from this appeal?

17 BOARD MEMBER CORNWALL: That's correct. The
18 appellant has a business relationship with my employer.

19 CHAIRPERSON PREZEAU: So Board Member David Cornwall
20 will recuse himself from the appeal.

21 So good morning. My name is Tracy Prezeau. I am the
22 Chair of the Electrical Board. The matter before us today
23 is an appeal in the matter of Kirby Electric, Inc., and
24 Douglas E. Kirby versus the Department of L & I, docket
25 number 06-2017-LI-00471.

1 This hearing is being held pursuant to due and proper
2 notice to all interested parties in Tacoma, Washington on
3 January 31st at approximately 9:27 a.m.

4 This is an appeal from a proposed decision and order
5 issued by the Office of Administrative Hearings on
6 February 8, 2018. It is my understanding that the
7 decision upheld citations and notice EMCDU00208 and
8 EMCDU00211 issued by the Department of Labor and
9 Industries on February 7, 2017. It is further my
10 understanding that the appellant has timely appealed
11 that decision to the Electrical Board.

12 At this time the appellant through counsel, Mr. Lees,
13 is present. The Department is present and represented by
14 Assistant Attorney General Ms. Balch.

15 The Electrical Board is the legal body authorized by
16 the legislature to not only advise the Department
17 regarding the electrical program, but to hear appeals when
18 the Department issues citations or takes some other
19 adverse action regarding electrical license certification
20 and installations.

21 The Electrical Board is a completely separate entity
22 from the Department and as such will independently review
23 the action taken by the Department.

24 When the Department issues penalties that are
25 appealed, the hearing is assigned to the Office of

1 Administrative Hearings to conduct the hearing pursuant to
2 the Administrative Procedures Act. The ALJ who conducts
3 that hearing then issues a proposed decision and order.
4 If either party appeals, that decision is subject to
5 review by the Electrical Board.

6 Please keep in mind that while our review is de novo,
7 we sit in the same position as the administrative law
8 judge and review the entire record regardless of whether a
9 certain piece of evidence is referenced by the ALJ. We
10 are bound by the evidence in the record and no new
11 evidence can be submitted at this hearing.

12 Each party will be given approximately 15 minutes
13 today to argue the merits of your case, and Board members
14 may ask questions, and the time may be extended at the
15 discretion of the Board.

16 At the conclusion of the hearing, the Board will
17 determine if the findings and conclusions reached by the
18 ALJ are supported by the facts and the rules pertaining
19 to licensing, supervision and certification and electrical
20 installation.

21 Do either Mr. Lees or Ms. Balch have any questions
22 before we begin this matter this morning?

23 ASSISTANT ATTORNEY GENERAL BALCH: No questions.

24 Thank you.

25 MR. LEES: I do not.

1 CHAIRPERSON PREZEAU: Very good.

2 Mr. Lees, please state and spell your last name.

3 MR. LEES: No worries. My name is Judd -- J-U-D-D,
4 last name is Lees -- L-E-E-S.

5 CHAIRPERSON PREZEAU: Very good.

6 And Ms. Balch, I know I've mentioned your name
7 previously. But if you would state your name and spell
8 it for our court reporter.

9 ASSISTANT ATTORNEY GENERAL BALCH: Yes. My name is
10 Valerie Balch. V-A-L-E-R-I-E, last name B-A-L-C-H.

11 CHAIRPERSON PREZEAU: Very good.

12 So it is my understanding that Mr. Lees, you're the
13 appealing party?

14 MR. LEES: That's correct.

15 CHAIRPERSON PREZEAU: So we'll have you go first.

16 It's a little slightly different than being in front
17 of the ALJ. You'll have 15 -- both parties will have
18 roughly 15 minutes to present your position in this
19 matter.

20 And then once we've concluded that, usually in the
21 event that either party wants an opportunity to give a
22 short rebuttal, we'll accommodate that, and then typically
23 turn it over to the Board members for discussion. And
24 we'll go from there. Very good.

25 So just because we have a new Board member, just

1 remind -- I know I read it, but I just want to remind
2 everybody that we -- no new evidence. We are confined to
3 the information that is in the appeal Board packet.

4 So with that, Mr. Lees, if you would kindly present
5 your case.

6 MR. LEES: Thank you, Madam Chair, members of the
7 Electrical Board. Appreciate this opportunity on this
8 appeal.

9 I represent both Kirby Electric and its
10 administrator, Doug Kirby. Both were cited related to the
11 use of a temporary employee from Tradesman International.

12 The citation is under RCW 19.28.271, which makes it
13 unlawful for a person or entity to employ an individual
14 for purposes of RCW 19.28 who had not been issued a
15 certificate of competency. The individual had a lapsed
16 electrical certification.

17 Doug Kirby was cited and fined under RCW 19.28.061,
18 subheading (5)(b) which requires an electrical
19 administrator to ensure that all electrical labels,
20 permits and licenses required to perform work are used.

21 The facts are relatively straightforward; although,
22 apparently this is a case of first impression. With
23 regard to the liability in the event, in this case you've
24 got Tradesman International or a temporary service
25 provider provides an electrician, and during the scope of

1 the employment the certificate lapsed.

2 The facts are these: Kirby Electric is a licensed
3 electrical contractor/subcontractor; it was at the time.
4 Tradesman International is a well-known licensed employer
5 providing qualified employees including electrical
6 employees for temporary use. Kirby reached out to
7 Tradesman to provide qualified electricians. And on
8 December 7, 2016, Tradesman sent out a licensed
9 electrician by the name of Vince Edwards to Kirby. At
10 the time his certificate was current.

11 Under the terms of the Tradesman agreement, Kirby was
12 to pay what's called a hourly bill-out rate. Now, that
13 bill-out rate included payroll taxes, unemployment
14 insurance, workers' compensation benefit amounts. But
15 there's no question that if in the event those were not
16 paid by Tradesman, Tradesman would be on the line as the
17 employer in this case.

18 Kirby was also responsible for paying any state sales
19 tax, but under the terms of the loan agreement could not,
20 quote, "recruit and/or employ Tradesman workers for
21 separate employment." There was a restriction on the
22 continued use of that individual beyond the time that they
23 were being loaned. And this is Exhibit C in the packet.

24 Mr. Edwards' certificate lapsed. Again, he started
25 on December 7. His certificate lapsed on January 9, a

1 little more than a month later. No one was aware of that.
2 Kirby was not aware of that. And neither was its
3 administrator, Doug Kirby. This was discovered on an
4 E CORE inspection. They happened to be driving by, two
5 inspectors, and walked in, asked for the certificates.
6 And Mr. Edwards, it was determined that his had lapsed,
7 again, a few days before.

8 Mr. Edwards was cited correctly under 19.28 for not
9 having a current administrative license -- excuse me --
10 electrical license. But rather than cite Tradesman,
11 Mr. Edwards' employer, they cited Kirby and its electrical
12 administrator.

13 Now, at the hearing -- and there was testimony that
14 reviewed the evidence as to who was the employer, whether
15 it was Tradesman or Kirby Electric for purposes of RCW
16 19.28. And in some ways, both of us were right, both of
17 us were wrong. I think the determination was that in
18 essence both are employers, but that Kirby was responsible
19 for making sure that the electrical worker from Tradesman
20 had a current certificate.

21 The basis for that argument, and it was still argued
22 on appeal before you, is an issue of the Electrical
23 Currents, and it was Exhibit 7 at the hearing. It's on
24 page 169 of the transcript here. And it's a 2003
25 Electrical Currents put out by Ron Fuller, Chief

1 Electrical Inspector, and it states in part at the bottom
2 of the page there, the heading is "Temporary Employment
3 Firms -- Requirements Under the Electrical Law." And
4 again, on page 169, it states, the "Temporary employment
5 firms that dispatch electricians to licensed electrical
6 contractors." And it states, "The temporary employment
7 firm is the employer of the individual" -- so there's a
8 determination there that it is clearly the employer --
9 "for purposes" -- so all other purposes -- "other than
10 chapter 19.28 The electrical contractor is the
11 employer for the purposes of chapter 19.28 ... (with
12 regard to) layout ..., performance of work, supervision,
13 (et cetera)." And "The electrical contractor is
14 responsible for the individual's work and must ensure the
15 individual meet all requirements"

16 It goes on to state that had the -- in this case
17 Tradesman sent the electrical employee to a general
18 contractor or somebody who's not a licensed electrical
19 contractor, then Tradesman would remain the employer for
20 all purposes including 19.28.

21 Now, this was news to Kirby. And that's the reason
22 for our appeal that there is a distinction there. The
23 administrative law judge and both parties argued with
24 regard to whether there was sufficient control by Kirby
25 over this electrician to constitute the employer. But I

1 think the issue is really the employer for purposes of
2 ensuring that the electrician is qualified and that their
3 certificate is current.

4 So our appeal is straightforward.

5 And I asked the inspector -- one of the inspectors
6 with regard to Electrical Currents whether that supersedes
7 the WAC's and the RCW's, and he admitted that it's
8 primarily for the purpose of explaining, providing
9 guidance to electrical contractors, but that if it's
10 contrary to the RCW's or the WAC's, it clearly cannot
11 supersede that.

12 This shifting definition of employer is not found
13 anywhere in the WAC's or the RCW's. It's specifically
14 under 19.28. And so we would argue that Kirby really had
15 no notice, no knowledge that it was responsible, that it
16 would constitute the employer for purposes of 19.28
17 specifically for the purpose of ensuring that it's the
18 electricians that were sent out by Tradesman, that their
19 certificates were current and up-to-date.

20 One can argue that -- and administrators and all
21 electricians should read Electrical Currents because it's
22 very helpful information. But the argument here on appeal
23 is that this distinction, the shifting distinction of
24 who's an employer for purposes of determining
25 qualifications doesn't supersede and is not reflected in

1 the RCW's and the WAC's and that, therefore, Tradesman
2 which would have been the employer and would have been the
3 employer cited had the electrician gone to a general
4 contractor should still be on the hook in this situation
5 as well even though they were sent to an electrical
6 contractor.

7 I'm not arguing on appeal and we don't contradict the
8 administrative law judge's determinations with regard to
9 control on the job site. Clearly the Tradesman employee
10 was treated as other employees and directed to perform
11 work. And I would clearly admit that in the event in the
12 course of performing that work, he or she was directed to
13 violate the code that they would be the employer on the
14 hook. But in this case, the issue turns solely on the
15 qualifications of that electrician, the duty to ensure
16 that the electrician remains qualified. And we argue on
17 appeal that that responsibility falls on Tradesman, and
18 that Tradesman should have been cited in this case along
19 with the employee who allowed his electrical certificate
20 to lapse.

21 We make the same argument on behalf of the citation
22 with regard to Doug Kirby that that responsibility does
23 not reside with the electrical administrator. And I note
24 that the citation that's the basis for the issuance of a
25 penalty and citation against the electrical administrator

1 pertains here to labels, permits, licenses, and as we've
2 argued in our brief as I attempted to make clear on
3 examination of the inspector that the certificate --
4 electrical certificate does not constitute either a label,
5 permit or license, and therefore, that doesn't apply.

6 So with due respect, I would ask that the
7 determination by the administrative law judge, the
8 provisional determinations be modified and that the
9 conclusions of law 5.8 through 5.11, 5.13 through 5.15 and
10 6.1 through 6.5 be modified and the determination be
11 changed that the employer for the purposes of RCW
12 19.28.271, subheading (1) applies to the employer in this
13 case Tradesman rather than Kirby.

14 If there are no questions, I conclude my remarks.

15 CHAIRPERSON PREZEAU: Thank you, Mr. Lees.

16 Ms. Balch.

17 ASSISTANT ATTORNEY GENERAL BALCH: Good morning.

18 Thank you, Madam Chair, members of the Board.

19 The Department respectfully requests that the Board
20 affirm the decision of the administrative law judge
21 because there was no error of law and the findings of fact
22 are all supported by the evidence.

23 The Department agrees that for the most part, the
24 facts are not disputed. However, there is one fact that
25 wasn't mentioned earlier that I think is important, and

1 that is that when Kirby Electric took on Mr. Edwards in
2 early December of 2016 he was sent to one job site, and
3 then later he was sent to a different job site, which is
4 the job site where the inspection occurred. So there was
5 a different location to which that specific individual was
6 assigned.

7 First I'll address the employment issue, then I'll
8 address the license issue.

9 Kirby Electric employed Mr. Edwards in violation of
10 RCW 19.28.271 (1). And the most straightforward argument
11 is the plain-language argument. The plain language shows
12 that Kirby employed Mr. Edwards. Because the goal of
13 interpreting statutes is to give meaning to the
14 legislative intent. And when getting -- leaning to the
15 legislative intent, you look at the broader statutory
16 scheme, not just the one portion of the statute.

17 RCW 19.28 does not define the word "employee." But
18 it does define who an electrical contractor is. An
19 electrical contractor is an entity that offers to
20 undertake, undertakes or submits a bid for or does the
21 work of an electrician.

22 Now, the Office of Administrative Hearings looked to
23 various other definitions beyond what's contained in RCW
24 19.28 to give understanding and meaning to the decision.
25 The Office of Administrative Hearings looked at the

1 definitions contained in RCW 19.31 that pertains to
2 temporary employment agencies.

3 Now, in the brief submitted by Kirby Electric and
4 Mr. Kirby, there is a citation to that part of the RCW,
5 RCW 19.31, but the only citation is to the definition for
6 temporary service provider. That brief ignores the
7 definition of an employer contained right in the temporary
8 service provider statute, and there the definition of an
9 employer is one that used the medium or service of an
10 employment agency. So here Kirby Electric used the medium
11 or service of an employment agency, Tradesman
12 International, to employ Mr. Edwards. That's looking at
13 the definitions of -- in temporary service agencies Web --
14 excuse me -- statute because there isn't a definition of
15 employer in RCW 19.28.

16 Now, the Office of Administrative Hearings also
17 looked at Washington Administrative Code 296-126. And
18 there, the definition of "employ" is to engage, suffer or
19 permit to work. And here Kirby Electric can be said to
20 have engaged or suffered or permitted to work Mr. Edwards.

21 One thing that wasn't exactly mentioned in argument
22 but was contained in a brief and I did want to briefly
23 address is that Kirby points to joint employer liability,
24 but that's an imported term of art from the WISHA case
25 law. That's industrial safety and health, and it does not

1 apply to this particular case. However, if it did,
2 there's an economic realities test that would apply. And
3 it's the Department's position that even under that test,
4 Mr. Edwards was an employee of Kirby Electric.

5 I did want to mention as well the Department's
6 interpretation is given great weight. The Department
7 administers the statute, and the Department has made its
8 interpretation very clear from at least 2003 onward.
9 There were two different issues of Electrical Currents
10 that were cited in the record, one was included as an
11 exhibit, one was discussed in testimony. But that shows
12 the Department's interpretation.

13 Now, there was an argument that Tradesman
14 International should have been cited instead of Kirby, but
15 that argument misses the point. Whether or not anyone
16 looks at Electrical Currents is really a red herring
17 because under the terms of the statute, Kirby Electric was
18 an employer.

19 Now, arguably the Department could have cited both
20 Tradesman International and Kirby Electric because they
21 both could technically fall under the category of
22 employer, but the Department has declined to cite one or
23 the other in a given situation. And the distinguishing
24 line there is to whom the electric -- electrician or
25 would-be electrician is sent. So if the staffing agency

1 sends the individual to an electrical contractor, they're
2 not acting as an electrical contractor; they're
3 dispatching to an electrical contractor.

4 Now, if the staffing agency sends an electrician to a
5 general contractor, then they are acting as an electrical
6 contractor. And the way we get there is you look at the
7 definitions in the statute. And the definition contained
8 in RCW 19.21 is that if an electrical contractor offers to
9 undertake, undertakes or submits a bid for or does the
10 work. So here, Mr. Edwards wasn't himself offering to do
11 the work, submitting a bid for; that was what Kirby
12 Electric was doing. However, if he were dispatched to a
13 general contractor, he could be said to be acting in that
14 way, offering to do work vis-a-vis Tradesman
15 International. That's the distinguishing line, and
16 that's the logical interpretation from the terms of the
17 statute.

18 So reading Electrical Currents or not reading
19 Electrical Currents does not really matter because reading
20 the statute shows who is responsible.

21 One thing that was pointed out was Exhibit C, and
22 that's the -- well, at least one portion -- oh, the only
23 portion in the record of the agreement between Tradesman
24 International and Kirby Electric. Now, regardless of what
25 that exhibit says, an entity cannot contract out of their

1 responsibilities under the statute. So you fall within
2 the statute or you don't fall within the statute. You
3 cannot disclaim any falling within the statute. You can't
4 contract around your responsibilities.

5 And I did want to point out now, I brought up that
6 one fact that wasn't mentioned earlier which is that Kirby
7 Electric moved Mr. Edwards from one job to another. So to
8 the extent that perhaps that argument doesn't quite make
9 sense about Tradesman dispatching and then, you know,
10 kind of throwing up its hands, well, once Kirby Electric
11 moved this worker to another job, it was again undertaking
12 offering to perform the services of an electrical
13 contractor. So it was acting as an electrical contractor,
14 and Mr. Edwards was acting as an employee.

15 The final issue I would like to address is the
16 citation for Mr. Kirby as the administrator. He did
17 violate RCW 19.28.061, sub (5)(d) when he failed to ensure
18 that all licenses were renewed.

19 Now, there was an argument that a license is not
20 synonymous with a certificate, but that's simply not the
21 case. And that is contained in the record actually at
22 pages 95 to 96. It's at the bottom of the page on page
23 number 95. And it's Kirby Electric's foreman who is
24 testifying, and he's asked on line 25, Question: "Okay.
25 And by certifications, what do you mean?"

1 Answer: "Licenses, our electrical licenses."

2 So whatever argument there may be that a license is
3 not synonymous with a certification, it is not borne out
4 by the testimony in this record because Kirby's own
5 foreman admitted that they are synonymous.

6 For those reasons, the Department would ask that the
7 Board affirm the citations.

8 And I would be happy to entertain any questions.

9 CHAIRPERSON PREZEAU: Thank you, Ms. Balch.

10 Mr. Lees, are you interested in any type of rebuttal?

11 MR. LEES: Just very briefly.

12 As I indicated in my remarks, in essence under
13 various laws, both are employers in this case. I don't
14 think there's any argument. And there was no argument at
15 the hearing and clearly not on appeal that Tradesman was
16 not this individual's employer for a certain purpose.
17 Exhibit C doesn't change that. We have no idea how much
18 the individual here, Mr. Edwards, was paid on an hourly
19 basis. Kirby didn't care. And clearly Tradesman would
20 be responsible for all the various taxes as Tradesman's
21 employee on behalf of Mr. Edwards. The question here is
22 apportionment of responsibility.

23 My client called Tradesman seeking qualified -- a
24 qualified electrician. And the assumption there -- the
25 borne-out assumption was that the individual had a current

1 electrical certification. He did, and then it lapsed.

2 And the issue then is, is Kirby on the hook for that?

3 At least under the Department's position, and it was
4 a very straightforward position on the part of both
5 inspectors whether or not Electrical Currents is needed or
6 not. That was the Department's position was that if Kirby
7 had been a general contractor, it would have remained the
8 responsibility of Tradesman and -- but since they were an
9 electrical subcontractor, Kirby was responsible.

10 Again, the issue then is both the apportionment of
11 responsibility and whether that interpretation is a
12 reasonable one and whether in this case there is an
13 argument that a reasonable electrical subcontractor would
14 know the distinction, the shifting definition of employer
15 for purposes of ensuring that the individual sent out was
16 truly a qualified electrician.

17 So on that basis, we would ask that the proposed
18 findings be modified. Thank you.

19 CHAIRPERSON PREZEAU: Ms. Balch, any interest in
20 rebuttal?

21 ASSISTANT ATTORNEY GENERAL BALCH: No. Thank you.

22 CHAIRPERSON PREZEAU: All right. Thank you.

23 Questions from Board members? Discussion from Board
24 members? There's coffee on the table over there.

25 Jason.

1 BOARD MEMBER JENKINS: The only thing I would mention
2 is Mr. Lees mentioned that the control of the employee
3 from Tradesman's point of view -- or I'm sorry -- from
4 Kirby's point of view is not -- they don't have control of
5 them. They have some limitations what they can do. But
6 the reality is is you show up to a job site as
7 electrician. The person that controls your work is the
8 foreman or the -- whoever's there working with you. So I
9 do believe in my opinion that he was truly an employee of
10 Kirby.

11 And so they actually when they found out his license
12 was lapsed, they sent him home. They didn't call
13 Tradesman and say, "Can you send your guy home because
14 he's got a lapsed card"; they just sent him home because
15 they had that type of control.

16 So I don't think that there's any dispute that he was
17 truly an employee of Kirby Electric.

18 MR. LEES: Well, as I indicated in my remarks, they
19 did control him, and I wasn't going to -- there's no basis
20 to determine that it was Trade -- he was calling
21 Tradesman every five minutes to find out what to do next.

22 But for purposes of this citation, I think Tradesman
23 is in essence a co-employer and should have been
24 responsible in terms of ensuring that that certification
25 was current.

1 BOARD MEMBER JENKINS: On that same note, though, if
2 they were the actual employer who is the supervising --
3 the electrical administrator for Tradesman -- because
4 that's who would be the responsible person. And nowhere
5 in the record does it show that Tradesman even has a
6 electrical administrator. Therefore, there would be no
7 responsibility at all. So it has to fall back to whoever
8 was running that particular job, which would be Kirby.

9 CHAIRPERSON PREZEAU: So I want to just interject
10 quickly and say I appreciate your defense of your client.
11 I would prefer if the conversation at this point is
12 between --

13 MR. LEES: I apologize.

14 CHAIRPERSON PREZEAU: No, no. It's understood. --
15 is between Board members at this juncture.
16 Dominic.

17 BOARD MEMBER BURKE: So I don't feel that the
18 employee/employer discussion or the license dispute on
19 definitions is as important as 19.28.061 (5)(b). I mean,
20 as a master electrician and an administrator myself, no
21 matter what the relationship is, I am fully responsible
22 for the compliance of the installation to meet the rules
23 and laws of the state, and the laws of the state require
24 for you to do an electrical installation, you have to
25 carry a license.

1 So rather than in my opinion getting hung up on
2 definitions and all this, I mean, I'm responsible for that
3 within my own firm, and I'm responsible for ensuring that
4 these people have the proper credentials to go do their
5 job, and I have taken that responsibility on, and it's a
6 big responsibility.

7 So I personally feel that we're kind of getting hung
8 up on things that don't really create the argument.
9 That's my position.

10 CHAIRPERSON PREZEAU: Okay. Any other comments?
11 questions?

12 I will say that, you know, it's an interesting
13 parsing of duties. Mr. Lees mentioned this morning that
14 -- recognized that Kirby would be responsible for the
15 installation and the conduct of this worker under 19.28
16 in the installation requirements, but then wants to parse
17 that responsibility of the administrator and parse that
18 responsibility of the electrical contractor with respect
19 to ensuring that the workers that they employ have the
20 proper current certifications, supervision ratios, and
21 those other responsibilities that are customary both in
22 19.28 and WAC 296-46B. And I don't believe that that
23 parsing of duties exists in the statute or in the rule.

24 I also found it incredibly helpful in the
25 Department's brief the definition, if you will, or the --

1 I don't know if it's definition or if that could be saying
2 that it's law -- the factors of the economic realities
3 test.

4 So I appreciate your comments, Dominic, about
5 controlling interest.

6 And, you know, I recognize, Jason, what you did in
7 the transcript that as soon as Mr. Williams I believe
8 whose name is the foreman on this job that -- where this
9 situation arises from, as soon as he became aware that
10 Mr. Edwards' trainee's certificate was expired, he sent
11 him home.

12 And there's some other, you know, governing factors
13 in the economic realities test that certainly do apply to
14 this situation.

15 Any other discussion from Board members or comments?
16 Seeing none --

17 Oh, sorry. Jason.

18 BOARD MEMBER JENKINS: I'd just like to concur what
19 Dominic was saying also. I'm not sure if we can modify
20 the findings of fact. Is that something we're doing next
21 or is that ...

22 CHAIRPERSON PREZEAU: Well, in the event that a Board
23 member wants to offer a motion.

24 As Pam has instructed the Board previously with
25 respect to the proposed final order, this body has the

1 ability to either in whole or in part affirm or reject the
2 proposed final order from the administrative law judge.
3 So in the event that there is erroneous either findings of
4 fact or conclusions of law in addition to the -- in this
5 affirmation of the two citations, right? we can modify the
6 proposed findings.

7

8 Motion

9

10 BOARD MEMBER JENKINS: I guess I'd make a motion then
11 to add 5.16, add actually onto the finding of fact on
12 Board packet page 15.

13 CHAIRPERSON PREZEAU: Okay. So hold on a second.
14 You want to add on --

15 BOARD MEMBER JENKINS: Add on 5.16 and --

16 CHAIRPERSON PREZEAU: So this is conclusions of law.

17 BOARD MEMBER JENKINS: -- and this finding of fact I
18 guess went too far. And maybe it's not appropriate, but
19 what I'd like to put in there is the fact that the
20 administrator on part 19.28.061 (5)(b), the administrator
21 failed to ensure the electrical work complies with the
22 electrical installation laws and rules of the state.

23 CHAIRPERSON PREZEAU: So I just want to -- because
24 Pam's like, "Where do you want that?"

25 BOARD MEMBER JENKINS: Well, maybe I put it in the

1 wrong spot. I'm sorry. I guess it would be under section
2 4 dot --

3 CHAIRPERSON PREZEAU: So what I'm -- if I -- this is
4 clarification. It is your intent to at the most
5 appropriate place to add an additional -- and you're
6 calling it a finding of fact?

7 BOARD MEMBER JENKINS: I think it's probably more
8 conclusions of law now that I think about it.

9 CHAIRPERSON PREZEAU: So your intent is to add
10 language from 19.28.061, subheading (5) --

11 BOARD MEMBER JENKINS: (b). (b) as in boy.

12 CHAIRPERSON PREZEAU: -- (b) as in boy. Do you want
13 that in this record --

14 BOARD MEMBER JENKINS: Yes.

15 CHAIRPERSON PREZEAU: -- that -- having to do with
16 the administrator, the designated master electrician or
17 administrator shall -- and then subheading (b) -- ensure
18 that all electrical work complies with the electrical
19 installation laws and rules of the state?

20 BOARD MEMBER JENKINS: Yes, that is correct.

21 CHAIRPERSON PREZEAU: So if --

22 BOARD MEMBER CUNNINGHAM: Madam Chair?

23 CHAIRPERSON PREZEAU: Yeah.

24 BOARD MEMBER CUNNINGHAM: On page 15, doesn't
25 conclusions of law 5.11 basically particulate what Board

1 Member Jenkins is describing, that Mr. Kirby violated RCW
2 19.28.061 (b)(d) by failing to --

3 CHAIRPERSON PREZEAU: Oh. Yes.

4 BOARD MEMBER JENKINS: The only reason I bring that
5 up is simply because of the dispute that's going on
6 between licensing versus certification.

7 CHAIRPERSON PREZEAU: Yeah, but I think Dylan might
8 have --

9 Thank you for your comments, Dylan.

10 -- is that the ALJ actually references the statute
11 that you -- oh, you want (b) as in boy.

12 BOARD MEMBER JENKINS: (b) as in boy.

13 CHAIRPERSON PREZEAU: Got it.

14 So Pam is saying, Would it meet your intent, Jason,
15 if this sentence which is not numbered but it's
16 immediately following conclusion of law 5.11, Mr. Kirby
17 violated RCW 19.28.061 sub (5)(d), and then add (b) to
18 that statement?

19 BOARD MEMBER JENKINS: That would be correct. That
20 would work.

21 CHAIRPERSON PREZEAU: So there's been a motion to add
22 subsection -- 19.28.061, subheading (5), subsection (b) as
23 in boy to that statement. Is the motion clear to Board
24 members? Is there a second?

25 BOARD MEMBER NORD: Second.

1 CHAIRPERSON PREZEAU: So it's been moved and seconded
2 to add that reference to RCW 19.28.061, subheading (5),
3 subheading (b) to the ALJ's proposed final order.

4 Any discussion on the motion? Seeing none, all those
5 in favor, please signify by saying "aye."

6 THE BOARD: Aye.

7 CHAIRPERSON PREZEAU: Opposed? Okay, motion carries.

8

9 Motion Carried

10

11 CHAIRPERSON PREZEAU: So any other proposed
12 amendments to the ALJ's proposed final order? Seeing
13 none, the Chair would entertain a motion regarding the
14 amended proposed final order.

15

16 Motion

17

18 BOARD MEMBER JENKINS: Motion ... yes.

19 BOARD MEMBER BURKE: Second.

20 BOARD MEMBER GRAY: So moved.

21 BOARD MEMBER JENKINS: So moved. Thank you.

22 CHAIRPERSON PREZEAU: So let's make a good record.

23 So Jason, your intent is to affirm the ALJ's proposed
24 final order with the one amendment that was just made. Is
25 that your motion?

1 BOARD MEMBER JENKINS: That is correct.

2 CHAIRPERSON PREZEAU: And Dominic, did I hear, you
3 seconded that?

4 BOARD MEMBER BURKE: Yes.

5 CHAIRPERSON PREZEAU: Discussion on the motion?
6 Hearing none, all those in favor please signify by saying
7 "aye."

8 THE BOARD: Aye.

9 CHAIRPERSON PREZEAU: Opposed? Very good. Motion
10 carried.

11

12 Motion Carried

13

14 CHAIRPERSON PREZEAU: So thank you. The Board has
15 made its decision.

16 Ms. Balch, the prevailing party, have you prepared a
17 final order or will you prepare a final order?

18 ASSISTANT ATTORNEY GENERAL BALCH: I have a final
19 order. I could add the language that was added via the
20 amendment.

21 CHAIRPERSON PREZEAU: Very good.

22 So given that, I would like the parties -- hopefully
23 perhaps you could get together in the lobby or in -- and
24 if you can agree on that proposed final order -- let us
25 know if you need some additional time.

1 In the event that you are not able to reach an
2 agreement today on that proposed final order, this matter
3 will automatically be set for presentment at the next
4 regularly scheduled meeting of the Board.

5 If an agreed order has not been received by that
6 date, the parties will be expected to file their proposed
7 orders and appear and advise why their proposed order best
8 reflects the Board's decision. Hopefully this will not be
9 necessary. If you are able to reach an agreement as to
10 the form of the order before the next meeting, please
11 forward it to the secretary of the Board's office, and
12 they will ensure it gets signed and copies provided to the
13 parties.

14 Thank you very much for your time today; appreciate
15 it.

16 MR. LEES: Thank you.

17 CHAIRPERSON PREZEAU: Okay. Very good.

18 (Addressing court reporter) Milton, do you need to
19 take a break? You're okay?

20 THE COURT REPORTER: I'm good.

21 CHAIRPERSON PREZEAU: Do Board members want to take a
22 break before our next item on the agenda? Keep rolling?

23 All right.

24 ///

25 ///

1 Item 3.C. PNW Electric, LLC

2

3 CHAIRPERSON PREZEAU: So we are now under agenda item
4 3C as in Charlie which is PNW Electric LLC denial of
5 variance.

6 And are the parties in this matter present this
7 morning?

8 MR. CANNON: I am.

9 SECRETARY THORNTON: Yes.

10 CHAIRPERSON PREZEAU: So just ... so unlike the last
11 matter in front of the Board, I don't have a script to
12 follow, which makes me nervous.

13 But before we introduce the parties, I would ask our
14 assistant attorney general to counsel Board members on the
15 jurisdiction in this matter on PNW.

16 ASSISTANT ATTORNEY GENERAL THOMURE: Good morning.

17 I don't think we've had one of these recently. But
18 I wanted to remind the Board members and the parties that
19 this is an appeal relating to the Department's
20 interpretation of a variance request. There's reference
21 in the record to a correction notice that was issued
22 sometime I believe last July of 2018. And PNW could have
23 appealed that to the Board. It did not do so. So for
24 purposes of today's hearing, this is being conducted
25 under RCW 19.28.110 (sic).

1 And I'll just read it. I think you guys all probably
2 know this. But it says that "In cases where the
3 interpretation and application of the installation or
4 maintenance standards prescribed in this chapter is in
5 dispute or in doubt, the board shall upon application of
6 any interested person ... determine the methods of
7 installation or maintenance or the materials ... to be
8 used in the particular case submitted for its decision."

9 So what that tells me is that each side has an
10 opportunity -- this is a question of law and
11 interpretation. It's not a question in terms of evidence.
12 Well, I suppose in terms of the evidence submitted by the
13 applicant. But the Board unlike other cases gets to tell
14 the parties what to do.

15 I will also note for the record that -- I am famil --
16 I do know that -- is it Mr. ...

17 MR. CANNON: Cannon.

18 ASSISTANT ATTORNEY GENERAL THOMURE: Cannon. Thank
19 you.

20 ... asked to have -- I believe he submitted a request
21 to the secretary's office yesterday to have witnesses or
22 somebody testify telephonically.

23 As you know, the Board some time ago -- and this is
24 probably new information to some Board members -- but the
25 Board had determined that it would not take telephonic

1 testimony. I'm not sure if testimony is even appropriate
2 in this situation.

3 In addition, there was documents that were submitted
4 to the secretary's office yesterday that is out of
5 compliance with RCW 296 -- anyway -- 995, subsection (15),
6 which is what we're under. And all documents before the
7 Board are required to be submitted 20 days prior to the
8 hearing. So unless the Board determines otherwise, those
9 documents will not be distributed and considered as part
10 of this appeal.

11 You guys can certainly have a discussion of that, but
12 that's kind of where we're at at this point in time.

13 (Addressing Chairperson Prezeau) Did I ...

14 CHAIRPERSON PREZEAU: Yeah, although, I will -- Pam
15 read from 19.28.111, not 101.

16 ASSISTANT ATTORNEY GENERAL THOMURE: We're under 111.

17 CHAIRPERSON PREZEAU: Yeah, but you said 101.

18 ASSISTANT ATTORNEY GENERAL THOMURE: Oh, did I? I
19 apologize. We're under 111.

20 Thank you, Tracy.

21 CHAIRPERSON PREZEAU: Yep.

22 And so what -- I just want to clarify for the Board
23 members. What is in question is whether or not the
24 Department took correct action in denying the variance
25 that was requested by PNW Electric and Mr. Cannon. Does

1 that make sense?

2 So I just wanted to -- we'll certainly introduce the
3 parties in this matter in a moment and have you state and
4 spell your name for our court reporter.

5 And because there's not a huge amount of guidance as
6 to what this structure looks like, the process looks like,
7 so I just want to lay that out for the Board members.

8 But for the parties in front of us is we'll give you
9 an opportunity to present -- both parties to present
10 arguments in this matter of the denial of the variance by
11 the Department of Labor and Industries and requested by
12 PNW Electric. So we'll give both parties approximately
13 15 minutes to present their arguments in this matter.
14 And we'll do it -- and then when the parties are done
15 presenting their case, in the event that either party
16 wants to give a rebuttal, just like we did in the last
17 matter in front of the Board, we'll entertain that option,
18 and then we'll have discussion as Board members and go
19 from there.

20 Are there any questions? Mr. Cannon, do you have
21 any questions about this process?

22 MR. CANNON: I do not. I do not.

23 Those -- the documents that were submitted yesterday,
24 we received the documents --

25 CHAIRPERSON PREZEAU: Okay, so hang on just a second.

1 I just want to -- time out.

2 MR. CANNON: Okay.

3 CHAIRPERSON PREZEAU: Mr. Thornton, do you have any
4 questions regarding --

5 SECRETARY THORNTON: No, I do not. Thank you.

6 CHAIRPERSON PREZEAU: Okay, very good.

7 And so I know we said your name already before, but
8 Mr. Cannon, if you would please state and spell your name
9 for the purpose of our court reporter.

10 MR. CANNON: It is James Cannon -- J-A-M-E-S,
11 C-A-N-N-O-N.

12 CHAIRPERSON PREZEAU: Mr. Thornton, would you do the
13 same.

14 SECRETARY THORNTON: Stephen Thornton --
15 S-T-E-P-H-E-N, T-H-O-R-N-T-O-N.

16 CHAIRPERSON PREZEAU: Very good.

17 And Mr. Cannon, you're the appealing party, so as
18 customary, we'll have you present your case first.

19 MR. CANNON: Okay. Well, good morning. I am not an
20 attorney. I'm just a small-time contractor, so you'll
21 have to forgive me for any missteps as I move through
22 this.

23 What I'd like to do is just start from the beginning
24 and go over the project as it started and how -- and what
25 we've run into during the project.

1 So in 10/28 of 2017 we were awarded a project by
2 Anacortes Marina. These are floating docks with an
3 existing electrical system installed. There have been two
4 times that that system was installed and approved by Labor
5 and Industries, one in 1980, and the documents that were
6 in question are the -- is the electrical certification for
7 that project from L & I.

8 We also provided the approved permit for the 1997
9 installation as well.

10 So we walked down there. We looked at those things.
11 We knew that they had been approved by L & I prior, the
12 wiring method. Even though we had that info, and we felt
13 it was good enough, we wanted to be sure that it would be
14 accepted before we purchased and installed quite a bit of
15 material. We were looking at about \$40,000 worth of
16 material.

17 So on 11/9 of 2017, we had a walk-through, a pre-
18 construction walk and discussion with State Inspector
19 Michael Jones.

20 We've done this in the past with Mike Jones, just as
21 a matter of fact just down the street at the Anacortes on
22 Cap Sante Marine. We wired E and F dock, and Mr. Jones
23 came down, and we showed him some things we wanted to do.
24 I don't mean we were asking him how to do things; we just
25 wanted to be sure he understood what we wanted to install

1 and he would accept it.

2 We have a copy of that permit showing the same
3 language that he wrote on there that he discussed the job
4 and approved it complete. That is written on the permit.

5 At the walk-through we discussed various things, the
6 use of direct burial -- (inaudible) -- in the handholes,
7 waterproofing. We discussed the receptacle taps, at which
8 time he stated they would be outdoor taps of unlimited
9 length, therefore, not subject to upsizing of the cable or
10 any length. We discussed lying the 480 volt G-cord across
11 the rip rap. The marina wanted to go that route. We
12 informed them they probably wouldn't be able to do that.

13 Anyhow, Mr. Jones had said at that time that that
14 would not be acceptable, that G-cord would have to go down
15 the ramp, you know, in conduit, which we were certainly
16 used to; that's what we've always done.

17 Finally, we discussed the free-air wiring method that
18 was used in both previous approved installations as well
19 as the location of the transformers and the switches that
20 would be on the floating dock.

21 So during our conversation we spoke about the benefit
22 of being able to use a smaller cable because it was in the
23 free air subject to the Table 310.15 (B)(17). We
24 discussed the fact that we would build the new runs on the
25 outer posts away from the vessels. This would allow us to

1 install the system and leave the existing system up and
2 running supplying power to boats during the project, and
3 at the end we could just jump the cables over and energize
4 the new lines.

5 Mr. Jones specifically said he liked that idea
6 because the cables would be further from the vessels.

7 Ladies and gentlemen, this is a fact. Mike Jones
8 absolutely said this method would be accepted. Bill
9 Douvier who is the harbormaster for the Anacortes Marina
10 was witness to this entire walk-through. He has provided
11 a statement to that effect that he was there with Mike
12 Jones when we were discussing this.

13 The purpose was to -- you know, this is a marina.
14 It's a unique situation, so, you know, before we go and
15 invest all that money, we want to make sure that the
16 authority having jurisdiction is going to be okay with
17 what we're doing.

18 Had he said, "No, you can't do that," we would have
19 never put that stuff at risk at 40 grand.

20 Immediately after the walk-through, Mark Roberts
21 pointed out, who was the lead electrical inspector in
22 Skagit County, pointed out that the enclosures would need
23 to be corrosion resistant. Well, we agreed; they should
24 be corrosion resistant.

25 I spent the next month looking for enclosures that

1 would be NEMA rated 3RX. We were not able to find any.
2 After extended discussions with Mark and Mike, Mike Jones
3 said I could use the same product used in Roche Harbor.
4 So we ordered those. This is AMP. Some of you guys may
5 be familiar with AMP. Their product is on 80 percent of
6 marinas around here. It's an aluminum -- you know,
7 aircraft aluminum powder coated, certainly corrosion
8 resistant.

9 Feeling comfortable after the walk-through with Mike
10 and all the research we had done, knowing that the
11 existing installations were permitted and approved, there
12 was no change in the language to the code since those
13 permits were approved, we went ahead and ordered material
14 and began installation.

15 There was a long delay. The switches needed to be
16 built specially for this, so it took a while. That was in
17 12/2 of 2017 is when we began installation.

18 In 5/17 of 2018 we had our inspection. We know that
19 Mike Jones retired prior to the inspection, about 15 days.
20 So I feel we're unfortunate in that matter, but it is what
21 it is.

22 They wrote -- Mark Roberts and certainly Jason
23 Armstrong showed up first who I believe was the new guy.
24 And so Mark Roberts, the lead inspector, joined him.

25 They wrote six corrections. Only two of those

1 corrections do we have an issue with, of course, are the
2 -- one being the overhead wiring, at which time I informed
3 Mark that Mike Jones was down for the pre-walk. Mark was
4 aware of that because we spoke with Mike and Mark the same
5 day that Mike was down for the pre-walk.

6 So I let Mark know that, you know, Mr. Jones had
7 looked at it, and he had told us that this would be
8 acceptable. Why not? It's been accepted twice in the
9 past.

10 And the other issue obviously we had was the
11 corrosion resistant enclosures. They -- their correction
12 failed those, citing that they were not NEMA rated 3RX.

13 At that time I informed him also that there had been
14 many projects just within the last year that had been
15 approved in Roche Harbor, one of which we worked on in
16 other marinas all over that have that exact same gear
17 installed, and it was approved.

18 At this time the corrections written by Mark Roberts
19 and Jason Armstrong stated that the free-air wiring needed
20 to be supported by a messenger wire; it was required to be
21 supported. That was what was written on -- and that
22 information you guys have in your packets; it says right
23 in there. This would later be completed by Jerry Vance.

24 On 6/8 of 2018 Mark and Jerry visited the marina to
25 walk with Bill to look at the existing approved overhead

1 wiring on the other docks. This is a marina of five
2 docks, all wired the same. He joined Bill. They walked
3 the marina. They looked at the existing installations
4 that are still up and working on Docks B, C, D and E. We
5 only changed the wiring on Dock A.

6 At this time they added -- during their walk, they
7 added two more corrections citing the transformers weren't
8 secure. They were. They just couldn't get up there and
9 see. We don't -- we're not worried about that too much.
10 And then the lighting conductors they also cited, adding
11 to the correction list.

12 From 6/8/18 to 6/15/18, two things went on. During
13 this time I had a couple phone conversations with Jerry,
14 trying to plead the case regarding Mike Jones and we had
15 it preapproved and, you know, this time, you know, we had
16 \$40,000 worth of equipment installed. And we were
17 certainly getting nervous about that.

18 I pled my case with Jerry, at which time I got to the
19 point where I feel he's just -- it just wasn't going to
20 happen. He just was not going to approve this.

21 So at that time I said, "Well, if I have to, I'll go
22 back and put up the messenger wire. Fine."

23 And he said, "Oh, what are you talking about?" He
24 said, "You can't do that."

25 And I said, "Well, it says right on the permit that

1 that's what was suggested."

2 And he said, "Oh, I'm going to delete that."

3 And I went, "That's not going to be acceptable
4 either."

5 So there we were.

6 On 6/16 of 2018 I drafted an e-mail and letter to
7 Mr. Thornton regarding the overhead wiring. That's on
8 page 24 and 25 of your packets.

9 From 7/6/18 to 7/17/18, I e-mailed Mark Roberts
10 regarding some five-day letters we were beginning to
11 receive during the talks with Jerry and Mark. We were
12 told we would get an extension to get this thing ironed
13 out. When we started getting five-day letters, I did
14 request that those -- the extension be added until we
15 received information back from Mr. Thornton when we
16 mailed him the letter.

17 I also e-mailed pictures of the transformer hold-
18 downs and the overcurrent protection on the lighting.

19 On 7/16 -- (inaudible) -- and Mark's response to the
20 lighting taps were outdoor taps of unlimited length. This
21 is shown on both the correction and the e-mail trail
22 between me and Mark. He's saying that the taps going down
23 to the lighting were outdoor taps of unlimited length;
24 therefore, needed to have overcurrent at the supply.

25 On 7/18 of 2018 I received a letter denying the

1 reconsideration of overhead feeders from Mr. Thornton.

2 He stated that the cover moorage was a building.

3 We were left wondering how -- both Mark Roberts and
4 Mike Jones were adamant that these were outdoor taps of
5 unlimited length. They insisted that. So we were
6 wondering how they could be outdoor taps running into
7 indoor feeders. These feeders we were told by
8 Mr. Thornton were in a building, and it's -- so we had
9 some contradictory things going on there. You know, with
10 one it's an outdoor tap with unlimited length, but yet
11 we're in a building. More confusion.

12 On 7/31 of 2018 the e-mails began between Tim
13 Ottenberger (phonetic) who is a rep for AMP Manufacturing
14 regarding the enclosures being corrosion resistant. He
15 doesn't see in there where it states that it has to use
16 Table 1 10 28 as far as choosing under the WAC rules that
17 it states it needs to be corrosion resistant. And then it
18 says refer to Table 1 10 28.

19 These e-mails were going back and forth as they were
20 trying to get their main, you know, their product
21 approved. Obviously a big deal to these guys. Their
22 products are all over these marinas. And so they're
23 looking at this thinking, How could they stop approving
24 our product within the last six months?

25 On 8/23 of 2018 I e-mailed Jerry and Mark regarding

1 a few things. Our intent to ask for a variance on the
2 overhead wiring, I wanted to let them know that we were
3 going to try -- our attempt was to get the wiring method
4 to stay in place. Obviously tearing out that entire
5 system that we just completed and putting in a whole new
6 system is obviously a really big deal for a small little
7 company like myself and my client.

8 I feel we did everything we could to ensure that
9 wouldn't happen. We did it slowly and methodically. So
10 I let them know that I would be applying for that
11 variance. I also let them know that I contacted Power
12 Science Engineering about field testing the enclosures.

13 I had so many fights on my hand, I didn't want to
14 fight through everything. So, you know, we conceded to
15 have Power Science Engineering come out and field test
16 these enclosures and certify that they could be listed as
17 3RX, simply meaning that they are a 3R enclosure made of
18 corrosion-resistant material.

19 And I also let them know that I would need an
20 extension again. You know, we have corrections, and all
21 the while we're trying to get these corrections done. And
22 we did get all of them done down to the last, you know,
23 the last ones that have to do with the overhead wiring.

24 That's why we're here today.

25 And I did not hear back from them on those issues.

1 On 8/28 of 2018 I e-mailed a letter to Mr. Thornton
2 asking for Marina to be recognized as an industrial
3 establishment.

4 We were cited on the open wiring on insulators saying
5 they could only be used in an industrial establishment or
6 agricultural. This is an attempt to try and find out --
7 we know that these things have been passed twice in the
8 past. Whether they were passed on the basis of 225 or
9 398, we don't know. But this is an attempt to, again, let
10 the system remain in place.

11 So during this time I was able to contact Mike Jones,
12 in which he immediately stated he did not recall any
13 discussions about the overhead wiring, which is incorrect.
14 He said he remembered everything but that discussion,
15 which is hard to believe because the whole job was those
16 wires running up there that you guys can see in the
17 pictures. That's the job. That's all there is to the
18 job.

19 I reminded him word for word our discussions.

20 He said, "I will stop by the site to see if it jars
21 my memory."

22 So again, a lot of our complaint is based on the fact
23 that we did have that pre-walked. And it was accepted by
24 Mike at the time. We would have never done that had he
25 said, "You can't do that," we wouldn't have done that.

1 We're not going to do that.

2 So he said he'd go back and visit the site and see if
3 it jars his memory.

4 He visited the site -- I met with Bill -- and said he
5 still didn't recall. But he offered a good deal on hiring
6 him to tell us how to fix it because he had opened an
7 electrical consulting firm in retiring. So -- obviously
8 we didn't hire him.

9 9/20 of 2018 I e-mailed Mark regarding the lighting
10 conductors being in taps. I attached a 2014 study guide
11 written by Gaylord Poe, an Ohio chief inspector. Mark did
12 not respond to that e-mail. He did call and say he
13 wouldn't accept it; they were not taps. Mr. Poe had no
14 jurisdiction in Washington state was his response.

15 On 9/21 of 2018 I e-mailed Jerry about the lighting
16 conductors not being tapped and the overcurrent protection
17 that we supplied at the supply to come into compliance
18 with that correction. I did not hear back from Jerry on
19 that one.

20 On 10/3 of 2018 I e-mailed Jerry and Mark concerned
21 on why I needed to get a field inspection costing \$1,200
22 as I found out to have those switches field inspected when
23 the exact same equipment was approved by the same
24 jurisdiction in Roche Harbor about three, four months
25 earlier, and that the phase 4 equipment for Roche Harbor

1 was already being shipped ready to be installed. This is
2 by Wilson Electrical, you know, a friend of mine as far as
3 my (audio speakers being adjusted) -- do I need to speak
4 up?

5 I again asked for clarification on the lighting
6 conductors. I got no response to that e-mail.

7 Between 10/3/18 and 10/18 of 2018, Mr. Wilson -- John
8 Wilson of Wilson Electric who was working on the Roche
9 Harbor project called to talk about the fact that Jerry
10 called him about the enclosures. He was using -- about
11 the enclosures he was using. And Jerry told him that
12 those enclosures would no longer be accepted unless they
13 were listed as, you know, 3RX.

14 You know, John was obviously concerned. The material
15 was already ordered and was in production at the --
16 (inaudible) -- creating those, getting them over to the
17 site. I believe John ended up cancelling the order, going
18 with something else. John was quizzing me on, you know,
19 what I had gone through with the 3RX listing and so on and
20 so forth.

21 I did talk to Mike Jones again after this. Things
22 were starting to progress. I was getting a little
23 worrisome, and I just wanted to talk to Mike and say, "You
24 know we had these conversations. Step up and be truthful
25 and maybe we can stop this."

1 He said, "How could he approve something that wasn't
2 installed" was his statement to me on the phone. He said,
3 "Well, how could I have approved -- pre-approved your job
4 if it wasn't installed?"

5 Well, I reminded Mike that it was installed when we
6 were on the walk-through. And it was. The existing
7 system was in place running boats before -- it was in
8 place the whole time we put the project up. We didn't
9 take that out until we were finished putting our cables
10 up.

11 So I reminded him of that fact and, you know, he kind
12 of "whatever." And then he said that they would not
13 listen to him anyway; it was a waste of time to say
14 anything in my defense.

15 On 10/19 of 2018 our variance was denied.

16 On 11/13 of '18 I spoke with Jerry saying that I need
17 another extension, we were going to appeal the variance
18 denial, if we could have an extension until the outcome.
19 I spoke with him about John Wilson and mine's conversation
20 at which time Jerry stated that he did not call John to
21 specifically talk about the enclosures. They were talking
22 about another job. But he did inform him that they would
23 not accept any enclosures without a 3RX listing.

24 I also spoke with him about our conversation with
25 Mike Jones. When I told him about the fact that the

1 existing overhead wiring was installed when we had the
2 walk-through, Jerry was surprised. He said, "Mike didn't
3 tell me about that."

4 So again, you know, a lot of our contention here is
5 that, you know, we did what we were supposed to. I don't
6 know what else we could have done.

7 The authority having jurisdiction is the boss.
8 That's it. We went to them first to find out if we're
9 going to be okay with this. And we were.

10 Why Mike is changing, I don't know; I have no idea.
11 But we have a witness to the fact that he was there.

12 And that brings us to why we're here today. This is
13 why we're appealing. You know, we're asking that the
14 variance be approved. We don't know of another way to
15 address this.

16 I'm not an attorney. I'm not familiar with all this
17 stuff. This is my first time ever doing anything like
18 this; that's for sure. Thank God. This is since I've
19 been in business. This is the first time I get to meet
20 you guys.

21 You know, we did have the walk-through with Mike.
22 That's a fact. It's a fact that he said it would be
23 accepted. It's a fact that that same installation has
24 been permitted and installed. We have documentation that
25 it has been permitted and approved by L & I in the past.

1 We have that documentation.

2 There's been no change in the language on any of the
3 -- on any of that stuff that's been cited. You know, we
4 feel there's a lot of ways to interpret the code.

5 Certainly Mike Jones said, "Go ahead."

6 And then Mark Roberts said, "No. You can do it, but
7 you got to put a messenger wire up."

8 And then the next guy said, "Nope, you can't do it at
9 all."

10 We tried our best to get everyone involved that's a
11 part of this and get a good plan together and get it done.

12 The wiring method has been up since 1980. It's
13 proven safe. It's a good system. There has been not a
14 single incident regarding it or even a complaint about the
15 safety.

16 We feel the State got it right when they approved the
17 two previous installations. We feel they got it right.
18 They had two chances. So now we're looking at three
19 inspectors that decided it was in compliance. We count
20 Mike Jones, which maybe we can't because he's denying it.

21 CHAIRPERSON PREZEAU: Mr. Cannon, if I may interrupt
22 you.

23 MR. CANNON: Oh.

24 CHAIRPERSON PREZEAU: So I just want to -- I've given
25 you a little bit of leeway just -- you know, I'm not an

1 attorney either, right? I'm an electrician. But it
2 appears that you're getting close to wrapping up your
3 remarks; is that true?

4 MR. CANNON: Yep, absolutely.

5 CHAIRPERSON PREZEAU: Very good.

6 MR. CANNON: Sorry. Am I over the 15?

7 CHAIRPERSON PREZEAU: Yep.

8 MR. CANNON: I apologize.

9 CHAIRPERSON PREZEAU: I've given you a little -- I
10 want to make sure we provide access, right? I just want
11 to remind ...

12 MR. CANNON: Thank you.

13 We just don't think it's fair that PNW Electric or
14 Anacortes Marina incur a \$40,000 rebuild in this instance.
15 We did everything we could. We don't know if -- you know,
16 there's some inconsistency: indoor or outdoor. One's an
17 outdoor tap. One's an indoor feeder. Is it a building?

18 So I will go ahead and wrap it up there.

19 You know, we think that there is language in the code
20 and the WAC that would allow this installation. We think
21 they are installed -- the wires are installed on the
22 perimeter of the boats being moored. There is no way
23 those boats can come into contact with those cables. You
24 would literally have to drive over the main walk to make
25 any contact.

1 I do see the pictures showing -- seeming very, you
2 know, somewhat close, but those boats are -- they're not
3 going to come into contact with those wires.

4 We believe they can be considered outdoor feeders if
5 they wanted to.

6 We know that the NFPA is going to change their
7 definition of covered moorage to not be a building. But
8 that's not going to come into law for a couple years. So
9 we understand that.

10 I'll let it go with that, not to carry you guys on
11 too much longer.

12 Sorry about the layman's terms, but like I said, I'm
13 just a small-time contractor.

14 These are facts that I've given you. This is exactly
15 how it went down.

16 CHAIRPERSON PREZEAU: It's actually more comfortable
17 -- I think most people on this Board prefer the layman's
18 terms to be honest with you; we understand those.

19 Mr. Thornton.

20 SECRETARY THORNTON: Good morning. All right.

21 So we're here talking about the variance that is in
22 your packet. If you looked at page 36, this is the
23 variance that was submitted, and it says that we're asking
24 for a variance be granted based on the following, and
25 there are four items there.

1 This is the documentation that was sent to the
2 Department when they asked for the variance. And this is
3 the documentation that we denied the variance on.

4 The first one talks about the walk-through with Mike
5 Jones. And if you look at 296-46B-010, it says that the
6 electrical inspector will give information as to the
7 interpretation or application of the standards of this
8 chapter but will not lay out work or act as a consultant.

9 So he may have been there and he may have talked
10 about those things, but until it's put up and looked at,
11 there's no way we can approve it until we actually see
12 what's installed.

13 And it says the second item is the same wiring method
14 has been permitted. If you look at the NEC from about
15 1978 through the '80s, there is an allowance in there for
16 wiring with special permission in 555 in marinas, but it
17 dropped off in '96, and then it comes back in in the early
18 2000's to be limited to the boatyard itself.

19 So it's possible that they were looked at during that
20 period of time with the code in force then and been
21 approved. But it doesn't fit the NEC today.

22 So the third one, it says, "We feel the wiring method
23 is a safe and reliable system as proven by its years of
24 service."

25 When you see that it was in the NEC in the '70s and

1 '80s and then it was taken out, and when it was put back
2 in, and then it was only allowed in the boatyard itself,
3 you have to feel that it was taken out for a reason.

4 And if you look at NFPA 303, that's the fire
5 protection code for marinas and boatyards, it specifically
6 has a definition of what a building is. And that
7 definition is a roof or a roofed-over structure with or
8 without enclosing walls. And that -- if you look at the
9 pictures, that's exactly what those boat moorages are
10 covered with.

11 So -- and the wiring is consistent with the wiring in
12 the rest of the marina. It could have been -- you know,
13 the whole marina could have been put in and approved at
14 the time under the current code, but that doesn't mean
15 that it's going to meet code today.

16 So with those four items listed, we denied the
17 variance.

18 CHAIRPERSON PREZEAU: Okay. Mr. Cannon, did you want
19 to offer any additional comment?

20 MR. CANNON: I would.

21 You know, Mike Jones did not lay out the work in
22 response to that, number one. He was down there to look
23 -- the cables were existent; they were in place. So to
24 say that you can't approve the work prior to it being
25 installed, Mike Jones was aware of the fact that we were

1 simply moving those wires out to the next row above roof
2 posts. That's it. It's the same installation moved out
3 to here (indicating). So he didn't lay out the work. We
4 didn't ask him to lay out the work. We didn't ask him how
5 to do the work. So there was no laying out or consulting.
6 We simply asked, "Would it be acceptable to you? Will
7 these hubs be acceptable to you?"

8 You know, we feel that's an important part as
9 contractors to involve the authority having jurisdiction.
10 After all, they're the ones that are going to control it.
11 They're the ones that are going to cause you headache if
12 you go against them. And certainly we wouldn't go against
13 them.

14 In response to the taking out of marinas in the 1980s
15 or such, those documents that you guys decided you would
16 like to see, those were from 1983. It shows that those
17 docks were inspected and approved.

18 In '97 it was also permitted. So if that language
19 came out in '95 or '96, it was back -- it was also
20 permitted and approved in 1997. And that information is
21 in your packet as well. Grove's City Electric with his
22 statement.

23 And we believe that the WAC talks about overhead
24 wiring where boats are moored, "moored" being on the
25 water. It's in there. It doesn't just say the yard. It

1 says where boats are being moored, stored and so forth.
2 So, you know, we believe the WAC does allow overhead
3 wiring where boats are being moored on the water.

4 So those are my three points there. I have nothing
5 on four. That's just -- that's all I have.

6 CHAIRPERSON PREZEAU: Thank you, Mr. Cannon.

7 MR. CANNON: Just to add a human element, this has
8 been nine months now. This -- it just doesn't seem right
9 what we went through to get it started, the anxiety and
10 the worries. And the financial burden; we have not been
11 paid. Our vendors have been paid. So, you know, I'm out
12 quite a bit of money as a little small contractor. I know
13 that has nothing to do with anything. But I just want to
14 add a little human element to this whole situation.

15 Thank you.

16 CHAIRPERSON PREZEAU: Thank you, Mr. Cannon.

17 Mr. Thornton, any additional comments?

18 SECRETARY THORNTON: No, I don't believe so.

19 CHAIRPERSON PREZEAU: Thank you.

20 Discussion from Board members? Thoughts?

21 BOARD MEMBER GRAY: I will have.

22 CHAIRPERSON PREZEAU: I figured you might, Bobby.

23 BOARD MEMBER BURKE: A question. Was this an
24 engineered project? Was there an engineer that did this?
25 Or was it design built --

1 MR. CANNON: Design built on --

2 BOARD MEMBER BURKE: So there was no engineer,
3 stamped engineer?

4 MR. CANNON: No, there's not.

5 Everything else is in the plans what we passed on
6 there. It's just the overhead -- we had 30 milliamp GFI
7 on the cables. And we have, you know, everything up to
8 the current. Everything else is in perfect form. I think
9 the wiring method is in perfect form.

10 BOARD MEMBER BAKER: Is your system that you
11 installed, is it energized and in use right now?

12 MR. CANNON: It is.

13 BOARD MEMBER BAKER: How long has it been in use?

14 MR. CANNON: Nine months. We've had a couple of
15 storms go through there at 57 miles an hour. Everything's
16 fine.

17 The old stuff's been installed since 1980. It's
18 still in use and still on the other four docks.

19 CHAIRPERSON PREZEAU: Bobby.

20 BOARD MEMBER GRAY: Thank you, Madam Chair.

21 A question for Steve or maybe for both of you. So
22 whether it's a marina or whether it's not it appears to
23 me is irrelevant. The variance is against Article 398;
24 is that correct, that you can't --

25 MR. CANNON: Yeah.

1 BOARD MEMBER GRAY: -- put open insulators inside --
2 open conductors on insulators inside a building. So at
3 issue is the fact that is this a building or not. And the
4 code's pretty clear that it is a building. It meets that
5 requirement. Plus I think you gave some definitions from
6 other standards that would support that.

7 Really, the question is whether or not this warrants
8 a variance because it's your understanding that that was
9 provided by an inspector representing the authority having
10 jurisdiction during the initial walk-down. And number 2,
11 it has been allowed in the past, the exact same
12 installation. Have I got that right?

13 MR. CANNON: Yes, sir.

14 BOARD MEMBER GRAY: All right.

15 So my question to you, Steve, is: Do inspectors have
16 the authority to issue special permission as described in
17 90.4, for example?

18 SECRETARY THORNTON: No, they do not.

19 BOARD MEMBER GRAY: That would have to come in
20 writing from the Department?

21 SECRETARY THORNTON: Yes.

22 BOARD MEMBER GRAY: Okay.

23 BOARD MEMBER BAKER: But, you know, to that point,
24 having been a contractor for 17 years and worked in this
25 industry for over 30 years, we do rely on the AHJ exactly

1 like you did for that guidance. And I believe every word
2 you said.

3 MR. CANNON: Thank you.

4 BOARD MEMBER BAKER: I believe every word you said.

5 CHAIRPERSON PREZEAU: Bobby.

6 BOARD MEMBER GRAY: Thank you.

7 And I concur. As a contractor also, it's pretty
8 frustrating to think that you've done your due diligence,
9 called and asked the questions, understanding the code
10 that that installation would not be technically compliant;
11 however, to get guidance on why was that one accepted and
12 this one was not accepted, it is pretty frustrating if
13 you're a contractor and trying to do the right thing, be
14 competitive and all those other things. So it is a bit
15 of an issue. But -- I don't know.

16 BOARD MEMBER BAKER: I think the unfortunate thing in
17 this whole case is the fact that your inspector retired
18 before you got inspection.

19 MR. CANNON: Agreed. And that was -- that's simply
20 because -- I believe that if Mike Jones would have come to
21 inspect my job, it would have passed. And so for that
22 alone is something that needs to be looked at when it --
23 it's potentially put me and my family out of business.
24 You know, we can't take that kind of hit. We're not a big
25 contractor. We can't not get paid the \$60-, \$70,000 that

1 they still owe us. And we've been riding nine months.
2 We've gone through everything we can to try and plead our
3 case, you know. So ...

4 SECRETARY FULLER: And Don, to your question about
5 depending on us for information, we -- you know, we did
6 260,000 inspections last year, and we've talked to a lot
7 of people. I certainly wouldn't want to be the agency you
8 can't talk to. But that doesn't change the fact that
9 installations need to be code compliant. We certainly are
10 not opposed to talking to people or giving them
11 information.

12 BOARD MEMBER BAKER: And I'm not implying that. And
13 I know -- I think the Department does a great job with all
14 that.

15 But I do believe that your inspector went out there
16 and walked that and could see what they were going to do
17 and said, "Yeah, okay, that's code." I believe that
18 happened. And it's unfortunate that another inspector got
19 involved.

20 I know in my own history when inspectors change, I
21 get a whole different list of corrections that I never had
22 before that a previous inspector had already looked at.
23 And he's experienced some of that, different inspectors on
24 his job. So --

25 Go ahead, Dominic.

1 BOARD MEMBER BURKE: No. I was just going to -- I
2 totally sympathetically agree wholeheartedly. But it
3 still comes down to the fact that we have to figure out if
4 this can work or not. And while I'm sympathetic to the
5 scenario and I get it, I think we need to figure out if
6 this is a safe installation and discuss it.

7 You know, I mean, I've had the same thing happen. I
8 think we all have as a contractor. We've been in that
9 position. I don't think it's the inspector's intentions
10 to do that either. It's just different people view things
11 different and interpret things different.

12 SECRETARY THORNTON: And just know that when I get a
13 variance like this and I see the pictures, knowing that
14 water and electricity are not a good combination, that
15 always makes me look a little harder. And then you add a
16 metal structure over that, which doesn't help any, and
17 then you run open conductors down through the middle of
18 it, that's just four red flags to me that say that a
19 variance is going to have to be really something in order
20 to meet the criteria to be a safe installation.

21 BOARD MEMBER BURKE: I would agree. But I think that
22 you also have to view that, you know, in order to make it
23 a safe installation, do they have the GFI protection? Do
24 they have 30 milliamps and other safeguards? Because it's
25 just like when we install electrical around a pool or a

1 hottub or -- you know. We take marinas very seriously.

2 MR. CANNON: It's an issue now. I mean, this is an
3 ever-changing issue now.

4 BOARD MEMBER BURKE: There's people jumping off docks
5 and dying, you know. And so yeah, I think it's --- I
6 don't think we take this lightly.

7 But I think we need to seriously talk about it
8 because -- I mean, it tells you right here that where
9 boats are moored, stored, moved, you know, it has to be
10 outside of the perimeter where they're moored, which it
11 sounds like it moved to the outside perimeter of where
12 that's moored.

13 Possible contact with mass and other parts of boats.
14 If you look at the pictures, one of the concerns is it's
15 within six feet of someone standing on there, which, you
16 know, unfortunately there are people that are tall enough
17 to possibly touch that. So -- but then you still have the
18 30 milliamp protection of the GFI which --

19 MR. CANNON: And we have 100 milliamp on the feeder
20 going down the dock as well. So ...

21 ASSISTANT ATTORNEY GENERAL THOMURE: Can I also to
22 that point remind the Board -- this is what we started
23 with -- is that this Board is not asked -- cannot act in
24 equity. The sole purpose of the Board at this point in
25 the variance request is to determine whether the methods

1 of installation or maintenance, et cetera, meet the
2 requirements as used under the chapter. So while a
3 different body might be able to act with equity, this
4 Board does not have authority to make a decision on the
5 variance request based on equitable principles.

6 CHAIRPERSON PREZEAU: Bobby.

7 BOARD MEMBER GRAY: Thank you, Madam Chair.

8 So back to the question from counselor through the
9 Chair. If this variance is approved, would it apply
10 universally? Or would it be just to this single
11 installation?

12 ASSISTANT ATTORNEY GENERAL THOMURE: This particular
13 -- the statute that we're under does address that. And it
14 says, "installation or maintenance or the materials to be
15 used in a particular case submitted for its decision." So
16 under RCW 19.28.111, it would only apply in regards to the
17 variance would only be to this particular situation.

18 SECRETARY FULLER: Yeah, it's site specific, not
19 something you can take around the state and say, I've got
20 one.

21 CHAIRPERSON PREZEAU: So I appreciate the discussion
22 and the comments, right? I mean, we've -- this body has
23 heard -- has had historically other matters come before
24 it. And what was pertinent or one of the items that was
25 pertinent is this legal concept of equitable estoppel

1 which is not mentioned this morning by name, but in
2 Mr. Cannon's defense, but it goes to the point of, Hey, if
3 a representative of a government agency or authority
4 having jurisdiction gives guidance or gives an answer, and
5 then at a later date that same authority having
6 jurisdiction says, "No, that answer is incorrect," right?
7 it's not a legal defense. Do those words make sense?

8 And so to your point, Dominic, you know, the matter
9 really is, is this a safe installation that meets the
10 current statute, the National Electrical Code and
11 Washington Administrative Code and not whether or not it
12 met the code in 1980 or in 1997.

13 You know, it's certainly powerful evidence, but
14 that's not what's in front of us. It's whether or not
15 this meets current installation requirements and whether
16 or not Mr. Cannon in his request for the variance, those
17 four matters that Mr. Thornton identified for us or
18 reminded us of, whether the Department had the
19 jurisdiction to deny the variance based on current NEC and
20 current WAC and current electrical statute. And I'm not
21 convinced that it does unfortunately.

22 BOARD MEMBER JENKINS: Madam Chair? Is there another
23 avenue that they can -- that he has to somehow alleviate
24 this issue? Or is this the final answer as far as he'll
25 have to go back and change that?

1 CHAIRPERSON PREZEAU: Well, so there is some guidance
2 in WAC 296-46B-995, subsection (15) which regards appeals
3 of decisions on installation. Right? So it says -- you
4 know, this is the process we're under -- "A party may seek
5 board review for disputes relating to the interpretation
6 and application of electrical/telecommunications
7 installation or maintenance standards" It goes on to
8 reference certain WAC's.

9 And then it goes on and says that "A party may seek
10 judicial review of a final order of the board within
11 thirty days after service of the decision."

12 So it is possible that either party in this case,
13 depending on -- you know, the Board has to take an action.
14 And if either party is dissatisfied with that action, then
15 they have a vehicle by which to seek a judicial review of
16 the decision the Board renders this morning.

17 MR. CANNON: Can I ask a question?

18 CHAIRPERSON PREZEAU: Mr. Cannon.

19 MR. CANNON: So should this variance not be granted,
20 it would be not granted on the basis that it's an unsafe
21 installation? Because --

22 CHAIRPERSON PREZEAU: It would be --

23 MR. CANNON: It would certainly be -- I read that it
24 could be deemed as safe, not necessarily -- say it doesn't
25 like the agricultural building, but it could be deemed a

1 safe installation and still allow the variance to pass for
2 this one situation?

3 ASSISTANT ATTORNEY GENERAL THOMURE: Are you looking
4 at me?

5 CHAIRPERSON PREZEAU: Uh-huh. Because I think I --
6 I'm pretty confident I know the answer, but I just want to
7 make sure that you're listening is it's based on whether
8 or not the -- whether this Board decides to grant the
9 variance or not grant the variance should be rooted in
10 does the installation meet the current electrical statute,
11 associated Washington Administrative Code and the National
12 Electrical Code. So it would be based on those
13 requirements.

14 MR. CANNON: Can I keep talking? No?

15 CHAIRPERSON PREZEAU: Sure.

16 MR. CANNON: Thanks.

17 Okay, so I guess I just don't understand how it's a
18 variance then. If it met code 100 percent, then why is it
19 a variance? Why am I asking for a variance? There would
20 be no such thing as a variance at that point. It would be
21 what it is. A variance would be an installation that, you
22 know, is as safe, just not quite letter-of-the-law code.
23 And we know by the GFI protection and all the protections
24 on marinas now -- and the cables are up way away from the
25 water zone, and we like that.

1 We think it's a safe reliable installation. We've
2 said that 100 times now. I know I'm kicking a dead horse,
3 but, you know, I just didn't understand how if it met, if
4 it was to the code, then we wouldn't have things called
5 variances I don't think.

6 ASSISTANT ATTORNEY GENERAL THOMURE: My understanding
7 is that the Department did issue a corrective notice which
8 you did not timely appeal. And the only thing before this
9 Board is a request for a variance. And we have to -- the
10 Board is -- it's my advice to the Board then is you must
11 follow the language in 19.28.111.

12 CHAIRPERSON PREZEAU: Bobby, did you have your hand
13 up?

14 BOARD MEMBER GRAY: No. I mean, I -- what we're
15 doing then is reviewing an interpretation. We're not
16 considering a waiver or a variance. A variance would
17 consider all those things I would think and say in this
18 case do we not have to comply with the rule as written?
19 Is there some circumstance there that would make this one
20 particular installation different than all the others that
21 would have to comply with the letter of the law?

22 So I'm -- I tend to agree with him that we're really
23 not doing anything here because all we're doing is
24 reviewing an interpretation; we're not offering or
25 considering a variance in this case.

1 CHAIRPERSON PREZEAU: Well, I mean, I certainly
2 recognize that I would -- I'm going to make an assumption
3 that all the Board members did the same thing when -- like
4 I did when I reviewed this packet of information, right?
5 Everybody read it. Everybody looked at the pictures. But
6 it has a -- I had a tremendous -- I have a tremendous
7 amount of sympathy for Mr. Cannon. I understand that, you
8 know, this is an incredibly unfortunate situation.

9 But I also have pretty grave concerns about this
10 installation as depicted in the images. The usage of dead
11 heads, no usage of steel messenger cable. The conductors
12 themselves are providing the tensile strength to hold
13 these splices in place. And in the record, though, this
14 is XHHW, and copper does not have the same tensile
15 strength that steel cable does.

16 And I am alarmed quite honestly by one of the images
17 in the packet where, you know, the clearance -- I
18 understand that the clearance from the bow of the boat
19 that's depicted in here is -- I understood it to be 5 feet
20 7 inches deducing from the image, which I know means that
21 the boat's not going to come in contact with that, but if
22 somebody's standing on the bow of that boat, it is
23 possible to come in contact with that. And I understand
24 that there's overcurrent-protective devices. But I am
25 incredibly uncomfortable with the installation as depicted

1 in the images.

2 Bobby.

3 BOARD MEMBER GRAY: Thank you, Madam Chair.

4 But in all due respect, isn't that exactly what
5 you're doing is evaluating the equivalency, which what I
6 heard the Chief say that in his opinion it did not warrant
7 an equivalency because there's imminent hazards probably
8 based on some of the details that you just directed.

9 That's a different question than does it meet the
10 code or does it not meet the code. So -- I mean, which
11 way is it? Are we reviewing the equivalency arguments
12 or are we reviewing the interpretation of the specific
13 language in the code?

14 CHAIRPERSON PREZEAU: I think under the appeals
15 process as listed in 19.28.111, it is -- the process is
16 the interpretation -- formal interpretation.

17 What I'm saying is I'm acknowledging the human
18 factor, which is -- you know, we're not robots. And so
19 all of us engaging in this process and preparing for today
20 and reviewing the packet likely, if you followed the same
21 process that I did, was evaluated in terms of is it
22 equitable? is it safe? Right? Because you can't -- as
23 human beings, we're not going to -- and as electricians
24 and electrical contractors and folks that work in this
25 industry, you can't separate those two.

1 Does that make sense?

2 What I think -- you know, I struggled with this.

3 And especially, you know, the appeal process does not give
4 us a huge amount of direction about the -- you know,
5 296-46B-995 doesn't give us a lot of direction and
6 guidance in this matter other than, you know, instructing
7 us to look at whether or not there's -- the Department
8 was justified or not justified in denying the variance.

9 ASSISTANT ATTORNEY GENERAL THOMURE: So perhaps I
10 could help clarify a little bit here.

11 Under the WAC 296-46B-995, this Board only has
12 jurisdiction to hear matters for certain things. Under
13 appeals -- that would be (12), when the party appeals a
14 penalty, this issue. (13) is to review proposed decisions
15 by the Office of Administrative Hearings. (14) is appeals
16 of suspension and revocation or non-renewal. (15) is
17 appeals of decisions on installation. And that relates
18 specifically to the statute that I told you earlier for
19 you. And (16) is appeals of continuing or basic training
20 class instructor for denials or revocations. And (17) is
21 appeals pertaining to engineer approval or electrical
22 testing laboratory. And then (18) talks about judicial
23 review.

24 So in terms of Mr. Cannon in this case, it was my
25 advice or -- in that err on the side of giving him a

1 hearing before the Board, but the only place it fits under
2 is an appeal of decision of installation.

3 So I understand your question regarding a variance.
4 But in terms of the, you know, erring on the side of
5 allowing access to the Board and giving the public and
6 Mr. Cannon an opportunity, that's kind of where we had to
7 stick it to give him a hearing, and that is what we're
8 stuck with ... unless, you know -- because it doesn't fall
9 under anything else that this Board has authority to rule
10 on.

11 CHAIRPERSON PREZEAU: Ryan.

12 BOARD MEMBER LaMAR: Madam Chair, so we're just
13 deciding if the State actually interpreted code correctly?
14 Bottom line up-front, that's what we're here to do?

15 CHAIRPERSON PREZEAU: Yes.

16 BOARD MEMBER LaMAR: That's what I'm trying to figure
17 out.

18 MR. CANNON: Why -- why was I -- why am I here? If
19 we can't appeal a variance, then why does it say it on the
20 sheet "denial of variance," that I'm appealing the denial
21 of variance? If you're not allowed to appeal a denial of
22 a variance, why --

23 CHAIRPERSON PREZEAU: Well, you're certainly allowed
24 to appeal that in the event that the Department made a
25 decision, you know, to deny a variance. You can come

1 before this Board as we're doing this morning and
2 reviewing the case and rendering a decision on that action
3 taken by the Department.

4 MR. CANNON: Mr. Thornton's letter to me states that
5 if I disagree with his decision, then I can appeal.

6 CHAIRPERSON PREZEAU: Which is why we're here and
7 which is why we're --

8 MR. CANNON: So if I disagree with his decision to
9 deny the variance, I can appeal that decision to deny the
10 variance?

11 CHAIRPERSON PREZEAU: So if either party, either the
12 Department or you, Mr. Cannon -- and again, I'm going to
13 go back to 296-46B-995, subsection (18), judicial review
14 of final decisions of the board.

15 So "A party" -- so either one of you -- "may seek
16 judicial review of a final order of the board."

17 So that's the exact same question that Board Member
18 Jason Jenkins asked earlier is: Is this -- if the Board
19 -- when the Board renders a decision whether to approve
20 the denial of your variance or reject the denial of the
21 variance, either party, the Department or you, Mr. Cannon,
22 have the opportunity to petition that decision to superior
23 court I believe.

24 So there's -- for either party, there is additional
25 avenues after this Board presumably makes a decision.

1 Does that make sense?

2 MR. CANNON: It does. There is another step. I
3 would have to go to superior court and go through all this
4 again. And so I understand that there's another step
5 allowed to me.

6 CHAIRPERSON PREZEAU: And to the Department.

7 MR. CANNON: I have one question if I could ask.

8 If I had not applied for a variance -- you know, it
9 was a guess between us whether to apply for a variance or
10 to just appeal, feeling that our installation was a solid
11 installation, we chose variance thinking, you know, as a
12 way to put our foot -- toe in the water, so to speak.

13 Had I applied for -- had I appealed the decision on
14 the correction, then what the Board has been speaking
15 about would be able to be looked at as relative safety.
16 Is that correct? So it's a matter of picking the wrong
17 thing to -- it's a matter of appealing --

18 CHAIRPERSON PREZEAU: I'm not in a position to give
19 you any legal advice, right?

20 But had -- you know, in the event that any party
21 appeals a citation and it comes -- in those situations,
22 the first step is to -- it would be -- that appeal would
23 be assigned to the Office of Administrative Hearings, and
24 an administrative law judge would preside over that
25 hearing and then would issue a proposed final order of

1 whether or not the citation was issued appropriately or
2 inappropriately. And if either party wanted to appeal
3 that just like was in the previous matter on this agenda
4 today, it would come in front of the Electrical Board.

5 So --

6 BOARD MEMBER BAKER: Madam Chair?

7 CHAIRPERSON PREZEAU: Yes.

8 BOARD MEMBER BAKER: Let me get caught up here.

9 So Steve, your response to his variance request isn't
10 denying the variance; you're denying the request for
11 variance. You're not acknowledging the request. Am I
12 reading that correct? I'm on page 11 of the Board packet.
13 You didn't deny the variance; you literally didn't
14 acknowledge the variance if I'm reading that correctly.

15 "A variance will not avoid compliance with the
16 intention of a section or rule"

17 What were you trying to communicate with that letter,
18 Steve?

19 SECRETARY THORNTON: That we weren't going to accept
20 the installation as it is today as being an equal level
21 of safety as what a code-compliant installation would be.

22 BOARD MEMBER BAKER: Okay. So he submitted a
23 variance. You looked at it and said, "Yeah, we're not
24 going to grant you that variance."

25 SECRETARY THORNTON: Right.

1 BOARD MEMBER BAKER: Okay, all right.

2 And that denial is based on the opening -- open wires
3 on insulators in a building?

4 SECRETARY THORNTON: Yes.

5 BOARD MEMBER BAKER: It's interesting that sometimes
6 these things linger on for years, you know. And you made
7 a comment that at some point you believe that they may
8 change the marina classification from a building to --
9 you know, if this thing lasts a couple years, you might be
10 in good shape; it wouldn't be a building anymore.

11 MR. CANNON: That's my understanding from a gentleman
12 who sits on the NFPA. One of the changes they made in the
13 NFPA is to not define covered moorage as a building
14 anymore.

15 BOARD MEMBER BAKER: Unfortunately we can't look at
16 that.

17 MR. CANNON: I know. Two years. Two years.

18 BOARD MEMBER BAKER: Steve, is that the only thing
19 with this installation is the open conductors?

20 SECRETARY THORNTON: No.

21 BOARD MEMBER BAKER: I know Tracy mentioned the
22 messenger cable. But you guys have already taken that off
23 the table. It's just --

24 SECRETARY THORNTON: That's not part of this ask.

25 BOARD MEMBER BAKER: Right.

1 SECRETARY THORNTON: There are other -- a lot of
2 other issues in the pictures. But that's not part of what
3 was asked for.

4 BOARD MEMBER BAKER: There was three corrections were
5 identified there.

6 SECRETARY THORNTON: There were probably half a dozen
7 things that raised questions in my mind when I looked at
8 the pictures. One of them was the distance from the
9 handrail to those conductors, how the installation was
10 actually put in. The wires just run through the house
11 knobs. And the types of butt splices that were used when
12 they looped around and the tension, the strength of that.
13 Yeah, there were just all kinds of things that raised
14 questions in my mind which in reality just kind of raised
15 the bar a little bit.

16 If you're going to prove to me that that installation
17 with those parts is going to be equivalent to conductors
18 in a raceway down through that building, I mean, you're
19 going to have to convince me of that. Not that I have my
20 mind made up ahead of time.

21 I mean -- I still want to talk to him when this is
22 all over. But ...

23 BOARD MEMBER BAKER: Okay. Thank you.

24 CHAIRPERSON PREZEAU: Dominic.

25 BOARD MEMBER BURKE: In that letter it says denied

1 based on 555.13. And if you go to WAC 555, reference to
2 (13), which is --

3 CHAIRPERSON PREZEAU: Hang on a second.

4 BOARD MEMBER BURKE: -- 296-46B-555 (7), it says,
5 "All wiring installed in a damp or wet location must be
6 suitable" It is. And (b) is -- this is the part
7 that I'm curious or that I have a little issue with is
8 "Extra-hard usage portable power cables"

9 So if you go to the second sentence, it says,
10 "Portable power cables are permitted as a permanent wiring
11 method under or within docks and piers or where provided
12 with physical protection."

13 So I believe the question could be: Is it extra-hard
14 usage portable cable? Because that could take up -- that
15 could answer the question of tensile strength. That could
16 also alleviate the need for physical protection under that
17 section.

18 And if you continue on, it's out of the perimeter of
19 the boats moored.

20 SECRETARY THORNTON: But didn't that say under piers
21 or docks? I mean, generally what we see is that's run
22 down on the dock to make up for the floating intersections
23 and movement, not up in the air.

24 BOARD MEMBER BURKE: Yeah, I understand. But I mean,
25 you also want to call it a building, you know. So it's

1 kind of within that. So again, a definition. But -- and
2 it seems like that's your hard-usage portable cable
3 question comes up to me because you're worried about
4 someone touching and hitting it; you're worried about
5 physical protection.

6 So -- it was just an observation.

7 MR. CANNON: Am I still allowed to speak? Or it's
8 all Board now?

9 CHAIRPERSON PREZEAU: No, go ahead, Mr. Cannon.

10 MR. CANNON: You know, it also states in there where
11 installed above decks with piers and landing stages --
12 (inaudible). We're on a floating dock. We're not on the
13 pier or a landing stage. This is a floating dock.

14 And in the same respect to that G-cord or portable
15 power cable, the unit would be flexible as the waves come
16 through and you have those undulations. It's the same
17 reason we liked that wiring method that's installed. It
18 allows those cables to move through those knobs.

19 And I was installing it, and the thing undulates,
20 especially across from the Tesoro refinery there with the
21 big boats going through, and you had the -- (inaudible).
22 But it undulates. And so we felt that conduit
23 installation up in the air is far more dangerous than
24 these wires being allowed to move freely. We're talking
25 about a rigid conduit in and out of boxes let's say. And

1 you have to put boxes up, you know, as the tides -- the
2 boats go by and the dock undulates. It seems to me it
3 could tear that apart over time. This stuff's been in for
4 38 years, 39 years now without incident. So I think it
5 seems safe to me.

6 BOARD MEMBER CUNNINGHAM: Madam Chair, are we even
7 really discussing any violation of 555? I mean, he meets
8 555 (7)(c). So it all hinges on 398.10, open wiring in a
9 building of this type.

10 So I don't even see what -- there's no point in
11 talking about -- (inaudible).

12 MR. CANNON: We did submit a paper asking that it to
13 be an industrial building. But there is no definition of
14 industrial establishment that we could find, only that it
15 be maintained by qualified personnel annually. We found
16 that through and through. But to be established as an
17 industrial establishment. There's no clear definition
18 that this could be classified or recognized as an
19 industrial establishment, thus allowing open conductors on
20 insulators. You know, we looked at that angle as well.

21 It is. It's a gated, private with a maintenance-
22 staff establishment. They will have annual testing by
23 qualified personnel. So we feel it could be recognized as
24 an industrial establishment allowing that wiring method.

25 BOARD MEMBER BAKER: Well, it's certainly a unique

1 environment. And I think that's why we have variances in
2 this state is to identify those things. Because the code
3 can't quite catch everything.

4 And I think it's appropriate to put a variance in for
5 this. I think the fact that you've got this installation
6 throughout that facility for the last 30 years or 38
7 years, whatever it is, I mean, I have a hard time saying
8 "no." It's a variance, you guys.

9 And he makes some really good points. This dock's
10 moving up and down. And to your point, they should be
11 tied to the insulators. No, it makes sense that they
12 should be loose. It's a unique environment. It makes
13 sense. It's GFI protected. It's GFI protected. If
14 somebody was standing on that boat and grabbed that wire
15 -- and it's a good point -- but it's GFI protected.

16 BOARD MEMBER BURKE: The ground's installed at the
17 bottom?

18 MR. CANNON: Absolutely, purposely.

19 BOARD MEMBER NORD: Madam Chair, may I ask Steve a
20 question?

21 CHAIRPERSON PREZEAU: Sure.

22 BOARD MEMBER NORD: Steve, is this marina unique as
23 far as its installation or are there other marinas within
24 the state of Washington that the Department's aware of
25 that are wired similarly?

1 favor signify by saying "aye."

2 THE BOARD: (Various) Aye.

3 CHAIRPERSON PREZEAU: So let's -- all those in favor,
4 signify by the show of hands. One, two, three, four,
5 five, six.

6 All those opposed, signify by raising your hands.
7 One, two, three, four.

8 All right. Motion carries.

9

10 Motion Carried

11

12 CHAIRPERSON PREZEAU: Mr. Cannon, this Board granted
13 your request for variance. Well, actually I should
14 restate that and say reversed the Department's decision in
15 the denial of the variance.

16 I do want -- I read from this previously, but I just
17 want to make sure that we make a good record.

18 Under 296-46B-995, subheading (18), judicial review
19 of final decisions of the board. So "A party may seek
20 judicial review of the final order of the board within
21 thirty days after service of the decision. Appeals of
22 final decisions and orders must be done in accordance with
23 chapter 34.05 RCW."

24 ASSISTANT ATTORNEY GENERAL THOMURE: So there needs
25 to be a final order reflecting the Board's decision. For

1 either party to appeal, you need something to go to the
2 superior court with. And so normally --

3 CHAIRPERSON PREZEAU: In the event that happens.

4 ASSISTANT ATTORNEY GENERAL THOMURE: Correct.

5 Normally the prevailing party would be required to
6 draft the order and present it.

7 I'm not sure, Mr. Thornton, if the Department would
8 like to take on that responsibility since Mr. Cannon is
9 pro se.

10 CHAIRPERSON PREZEAU: Some fancy words for normally
11 the winner, right? Normally the winner writes the -- like
12 basically in this case, Mr. Cannon, it can be as simple as
13 the Board heard the matter and reversed the Department's
14 denial of the variance, so granting the variance in this
15 variance number 18-06.

16 Both parties would need to sign that document or
17 agree to that document. In the event that they don't
18 agree with the contents of that document that it
19 accurately represents the action taken by this Board
20 today, then just on that would come back to the next
21 regularly scheduled meeting of the Electrical Board.

22 MR. CANNON: Meaning I could probably even write that
23 up, right?

24 CHAIRPERSON PREZEAU: Yeah. So just like I said to
25 the -- in the previous matter, I asked the parties in that

1 matter to see if they could get together and see if they
2 could agree on the merits of the action the Board took
3 today and provide this Board with that signed document or
4 agree to the document.

5 Do those words make sense?

6 MR. CANNON: Yes.

7 CHAIRPERSON PREZEAU: Well, it would be difficult --
8 maybe Steve, given that we still have --
9 He still needs to attend this meeting.

10 MR. CANNON: Yeah, right. No, I get that.

11 CHAIRPERSON PREZEAU: So perhaps -- he has other --

12 SECRETARY THORNTON: We can get together and maybe --
13 I don't know. Yeah, we'll figure something out.

14 CHAIRPERSON PREZEAU: Yeah, there's other staff
15 members here that can aid in that conversation. Does that
16 make sense?

17 MR. CANNON: We could -- so this needs to happen
18 today, the final paperwork that you need? Or could I meet
19 with Steve later?

20 CHAIRPERSON PREZEAU: You can meet with Steve later.

21 MR. CANNON: Okay, that's what I thought you said.
22 That's what I thought you meant.

23 CHAIRPERSON PREZEAU: But just if -- in the event
24 that you are unable to agree before the April meeting of
25 the Electrical Board, then we will come back and have a

1 discussion only on that proposed final order.

2 Does that not -- we're done talking about --

3 MR. CANNON: Yep, I got 'cha. I got 'cha.

4 CHAIRPERSON PREZEAU: We good?

5 MR. CANNON: Yeah. Just on that proposed final order
6 so that if something -- we need to move forward with the
7 judiciary, then there's paperwork --

8 CHAIRPERSON PREZEAU: That is correct.

9 MR. CANNON: -- confirming what happened here today.

10 CHAIRPERSON PREZEAU: Very good.

11 Okay. Thank you both very much. Thanks to the Board
12 members.

13 I'm interested in understanding -- we've been at it
14 for two and a half hours, which is -- are we interested in
15 taking lunch at this point? Or are we interested in
16 taking a break?

17 BOARD MEMBERS: (Various) Break.

18 CHAIRPERSON PREZEAU: Break. All right. Very good.

19 So I am inclined to have us come back on the -- you
20 know, take a break and come back on the record at 11:45.

21

22 (Recess taken.)

23

24 CHAIRPERSON PREZEAU: All right. So it is now 11:51,
25 and I would like to re-call the January 31, 2019,

1 Electrical Board meeting back to order. A little bit
2 longer break.

3

4 Item 4. Secretary's Report

5

6 CHAIRPERSON PREZEAU: We are on agenda item 4 which
7 is Secretary's Report. So Steve.

8 SECRETARY THORNTON: All right. For the Secretary's
9 Report, budget-wise the fund balance on December 31st was
10 \$11,660,000. That's about five and a half months worth of
11 operating expenditures. For the second quarter of 2019,
12 the expenditures were \$2,117,000 compared to \$1,994,000
13 the same period a year ago. So they've gone up about 6
14 percent.

15 Our average monthly revenue is \$2,190,000. Operating
16 costs have -- compared to \$1,800,000 the same period the
17 year before. So that's up about 18 percent. It doesn't
18 look like there's any slow-down anywhere in the near
19 future.

20 Customer service-wise, 36,434 permits were sold that
21 quarter. 94 percent were sold on-line. That stays pretty
22 consistent. 97 percent of contractor permits are sold
23 on-line. Homeowner on-line sales permits for the quarter
24 were 63 percent. All of those on-line numbers have pretty
25 much leveled out, and they're staying just about those

1 same numbers.

2 On-line requests, 83 percent.

3 Customers made 76 percent of all electrical license
4 renewals on-line. That's up about 1 percent from the last
5 quarter.

6 As far as our scorecard goals, inspections performed
7 within 24 hours, in 2017, we were at 76 percent. For
8 2018, we're at 84 percent.

9 Inspections performed within 48 hours, in 2017 it was
10 90 percent. For '18, it's 95 percent. So we're doing
11 better response time, getting to the jobs quicker.

12 Number of focused citations, in 2017 for this
13 quarter, the field wrote 398, ECOPE had 271 for a total of
14 669. In 2018, the field issued 765 citations. ECOPE
15 issued 1,271. So that's 2,036 citations in that quarter.

16 Inspection stops per inspector, in '17 was 10.6.
17 That's up to 11 now.

18 Electrical disconnect corrections, in '17 it was
19 11,148. In '18, it's 11,204.

20 And like I said earlier, we did 260,000 inspections
21 last year. The highest number I'd seen before that was
22 240,000.

23 Licensing process turn-around time, our goal is 99
24 percent the same day -- or 100 percent the same day;
25 excuse me. And in 2017, we were at 99 percent. 2018,

1 we're at 98 percent.

2 Turn-around time for plan review, our goal is to be
3 at a week and a half, 1.5 weeks. In 2017, we were 2.1
4 weeks. And in '18, we're at 2 weeks.

5 CHAIRPERSON PREZEAU: Steve, if I may interrupt, is
6 it possible -- I think I know the answer to this, but I
7 just want -- that a single permit or a single inspection
8 could yield multiple electrical disconnect corrections on
9 one project, one inspection.

10 SECRETARY THORNTON: Correct, yeah.

11 CHAIRPERSON PREZEAU: So it's -- because I'm, you
12 know, sort of looking at this ratio of 36,434 permits were
13 sold last quarter, and in that same period of time, 11,204
14 electrical disconnect corrections were issued. So it's
15 not necessarily that every third job has --

16 SECRETARY THORNTON: No.

17 CHAIRPERSON PREZEAU: Do you see where I'm at?

18 SECRETARY THORNTON: Yeah. One out of ten's going to
19 be a homeowner with 15 or 20, yeah.

20 So licensing. There were 6,762 electrical licenses
21 processed last quarter. The turn-around time on those is
22 98 percent the same day. If we were fully staffed, we
23 would probably be able to get to the 100 percent mark.

24 No new testing labs.

25 And any questions?

1 CHAIRPERSON PREZEAU: Dominic.

2 BOARD MEMBER BURKE: Do you attribute the -- do you
3 think it's assisting the mobile program to getting your 24
4 hour requests up? Is that part of that?

5 SECRETARY THORNTON: I think it's a multitude of
6 things. I think mobile inspection has helped a little
7 bit. I think the program specialists have helped the
8 inspectors be more productive. Virtual inspections.
9 Those are instantaneous, so those all go in at 100
10 percent. And those are jobs that we didn't have to spend
11 the time driving to. So that gives us time to get to some
12 other places. Yeah. There's a multitude of things we've
13 done in the last five years I think that have all
14 contributed to that.

15 BOARD MEMBER BURKE: It's coming to fruition and --

16 SECRETARY THORNTON: We're getting there. Yeah,
17 we're getting there.

18 BOARD MEMBER BURKE: 11 stops per day and still
19 increasing your inspections by --

20 SECRETARY THORNTON: Well, and citations are up.
21 That takes us out of the field.

22 BOARD MEMBER BURKE: You said that the environment
23 and so many people coming into town.

24 SECRETARY THORNTON: That and ECORE has caught
25 multiple out-of-state contractors doing big jobs.

1 We had one just the other day for retrofitting LED
2 lighting for sign boards along the highway. And they had
3 done many before we caught up with them. And they were, I
4 don't know, out of California or Georgia or somewhere.

5 So that's a lot of where ECOPE's focus is right now
6 is those types of jobs. And when they find one, it can be
7 100 to 200 citations. So ...

8 BOARD MEMBER BURKE: Wow.

9 CHAIRPERSON PREZEAU: Any other questions for Steve?

10

11 Item 5. Certification/CEU Quarterly Report

12

13 CHAIRPERSON PREZEAU: All right. We are now on
14 agenda item 5, Certification and CEU Quarterly Report.

15 Larry Vance -- Technical Specialist Vance, you want
16 to join us please.

17 MR. VANCE: Sure.

18 Hello, Madam Chair, members of the Board. My name's
19 Larry Vance for the record.

20 Well, as in -- as reported in every other meeting,
21 there's not a lot of movement here in the first-time exam
22 pass rate. It's sitting here in this report the previous
23 year at 48.65 percent.

24 During this period of time there's 1,073 candidates
25 for the exam. Kind of looking back in history, because of

1 our economy I think it's ticked up a little bit. It used
2 to be 700, 800. But now we're at 1,073. So that's --

3 We haven't heard any capacity issues or anything from
4 PSI, so we don't really have any concerns in that regard.

5 And that's really all I have. You guys have any
6 questions?

7 CHAIRPERSON PREZEAU: Any questions for Larry?

8 So I know this came up at the last quarter, and we
9 talked about there's this one person stuck in a old exam,
10 and we -- do you know what I'm talking about for the
11 general journeyman's exam on page 4?

12 MR. VANCE: Yeah. He's that one guy. And until this
13 year gets by, then he'll drop out.

14 But I think I have -- now that you're reminding me,
15 I'm thinking that I was supposed to kind of track that one
16 guy down, right?

17 CHAIRPERSON PREZEAU: Because you had mentioned last
18 quarter that it's possible that that person doesn't
19 actually exist as a -- it's a software glitch.

20 MR. VANCE: Could be. And what I would like to do
21 now is commit to the Board that we'll have -- I will
22 identify who this one guy is and --

23 CHAIRPERSON PREZEAU: Well, we don't certainly need
24 the individual's name.

25 MR. VANCE: No. But I will have some more

1 information about the guy.

2 CHAIRPERSON PREZEAU: Does the person actually exist?
3 Is this a software glitch? Right? What's -- that would
4 be greatly appreciated.

5 All right. Very good.

6 MR. VANCE: All right.

7 CHAIRPERSON PREZEAU: Thank you, Larry.

8 Any other questions for Larry? Awesome.

9 Thank you.

10

11 Item 6. Rule Revisions and TAC Committee

12

13 CHAIRPERSON PREZEAU: Okay. So we are under agenda
14 number 6 which is Rule Revisions and the Technical
15 Advisory Committee committee. And Rod Mutch, you --

16 And I should recognize that it is now after 12:00,
17 right? Rod, do you -- are you prepared to go forward with
18 this proposed --

19 MR. MUTCH: I just need about two or three minutes
20 here to get set up.

21 CHAIRPERSON PREZEAU: My real over-arching question
22 is since we're relying on you to make this presentation to
23 the Board, do you need lunch before you do that or ...

24 MR. MUTCH: I'm open to whatever you guys want.

25 BOARD MEMBER JENKINS: Let's go.

1 CHAIRPERSON PREZEAU: Board members?

2 Milton, are you all right on that?

3 THE COURT REPORTER: I'm fine.

4 CHAIRPERSON PREZEAU: I did bring a little bag of
5 Scooby snacks.

6 I do want to enter into the record as the technical
7 specialists are getting prepared for the presentation that
8 while it doesn't appear with the public comment sign-in
9 sheets that I have in front of me, it doesn't necessarily
10 -- it's not obvious to me that any of these folks want to
11 make a comment or engage the Board on this agenda item 6,
12 the rule revisions and the technical advisory committee in
13 this review of the proposed changes to the WAC. However,
14 it's possible that there are people in the room that want
15 to make comments -- want to provide public comments on the
16 ongoing rulemaking process. And I want to just be very
17 clear that while there are currently scheduled public
18 comment sessions scheduled around the state, the sole
19 purpose --

20 SECRETARY THORNTON: Stakeholder meetings, yeah.

21 CHAIRPERSON PREZEAU: -- for the sole purpose of
22 members of the public, stakeholders to engage the
23 Department directly, we will also entertain under agenda
24 item 9, right? public comment regarding the ongoing
25 rulemaking process. What we are not going to do is allow

1 for public comment during the Board's opportunity to
2 review the ongoing rulemaking process.

3 Does that make sense?

4 This is our opportunity -- and it's actually in the
5 WAC. This is -- it's in statute that this is our
6 opportunity for the Department -- this is the Department's
7 responsibility to report to the Board of what is happening
8 with the ongoing rulemaking process. So this is our
9 opportunity as an assembled Board to participate in that
10 process. And in the event somebody wants to make public
11 comment regarding this, it will happen under agenda item
12 9.

13 MR. MUTCH: I'm ready.

14 CHAIRPERSON PREZEAU: Okay, Rod, please state and
15 spell your name for the purposes of our court reporter.

16 MR. MUTCH: My name is Rod -- R-O-D, Mutch --
17 M-U-T-C-H. I'm a technical specialist with the
18 Department. And I have kind of coordinated the rulemaking
19 process for the Department.

20 I sent the Board in December the results of the TAC
21 committee meeting that was held and two copies of
22 documents, one was the stakeholder proposals that were
23 submitted to the Department, and a first draft copy which
24 contains all of the proposals that the Department is
25 seeking to obtain the Board's advice on. So -- and in

1 that e-mail I detailed 14 changes that the Department made
2 to the first draft after -- based on the TAC committee
3 response.

4 And so what I would like to do is go through the
5 first draft. Certainly if the Board has questions about
6 specific items, go ahead and stop me and we can discuss
7 those items. Ultimately at the end, we -- the Department
8 needs a recommendation from the Board. And that can
9 either be, you know, to accept the first draft as
10 presented. You can accept the first draft with the
11 exception of certain items that the Board, you know, does
12 not recommend the Department move forward with. So -- and
13 like I said, if you want to stop me in the middle -- I'm
14 going to try and go through pretty quickly. Hopefully you
15 had a chance to read all the proposals and review them.
16 But let me know if I get going too fast or if you'd like
17 to stop for questions.

18 And I -- I'm sorry, the new Board member, what was
19 your name?

20 BOARD MEMBER LEE: Erick Lee.

21 MR. MUTCH: Erick Lee. Did you get a copy of these
22 proposals? Because I didn't realize that you were --

23 BOARD MEMBER LEE: Yeah, I don't think I --

24 MR. MUTCH: I could -- I'll send you a copy after
25 this meeting.

1 BOARD MEMBER LEE: Thank you.

2 MR. MUTCH: Okay.

3 So the first WAC -- and when I say WAC 010, that
4 means WAC 296-46B-010. I'm going to shortcut it a little
5 bit.

6 So WAC 010 proposes to update the NESC version of the
7 adopted standards to 2017. And it also proposes to adopt
8 the 2020 National Electrical Code with an effective date
9 of July 1, 2020. This gives -- it will be published in
10 August of 2019, and it gives a chance for the Department
11 to review any changes that the 2020 has and for
12 stakeholders to be able to update it before it's adopted
13 in July of 2020.

14 WAC 100, there's a few definitions that changed. One
15 definition of "household appliance" was reworded slightly
16 to make more sense. Previous wording said such as cooking
17 and other equipment. It didn't really make sense. We
18 reworded it a bit, and we added clarification that water
19 heating appliances is an appliance for the purposes of
20 definition of "household appliance."

21 The definition of "new building." This is a new
22 definition, and it has to do with the property owners
23 exemption allowing them to do wiring except on a new
24 building for rent, sale or lease.

25 And so when a property owner installs a manufactured

1 mobile or modular home and sets it on a foundation and
2 then intends to rent or sell it, we're saying that that is
3 engaging in electrical contracting work and must be done
4 by an electrical contractor.

5 That is a change from the current WAC, but it is
6 currently the policy of the Department. So we're just
7 putting that into rule.

8 CHAIRPERSON PREZEAU: So is this one of those
9 examples, Rod, where maybe something that was previously
10 published in the Electrical Currents newsletter is
11 actually finding its way in the rule so that -- to bring
12 greater awareness?

13 MR. MUTCH: Yes. And there was a newsletter article
14 published back in 2007 I believe, and it was -- the
15 language in it was a little contradictory. So this makes
16 it clear.

17 Another definition. We added some service definition
18 back in 2008 because the definitions the Department felt
19 were flawed and conflicted with 230 40. In 2011 the NEC
20 changed the definitions in the NEC. So we are eliminating
21 these definitions in rule because the current NEC
22 definitions are good.

23 WAC 210, 008(B) is the other than dwelling unit GFCI
24 requirements. I believe it was 2017, maybe -- it might
25 have been 2014 the NEC expanded GFCI requirements to

1 include three-phase receptacles and other than 120 -- 15
2 to 20-amp receptacles. That threw GFCI requirements into
3 things like mobile home supply equipment and RV supply
4 equipment.

5 When you buy an RV pedestal, it comes with a
6 receptacle mounted in it that does not have GFCI
7 protection. And so we're -- GFCI protection is not
8 required in Article 550 or 552 for RV's. So the
9 Department is proposing to eliminate the GFCI requirement
10 for those receptacles. Otherwise, we'd have to remove the
11 listed breaker out of that supply equipment and replace it
12 with a GFCI breaker.

13 WAC 215 is -- it is a new requirement that is similar
14 to a requirement that's in WAC 230 where you have a feeder
15 that supplies a piece of equipment that has an ampacity
16 that's smaller than the rating of the piece of equipment.
17 You have to put a label on that piece of equipment to say
18 that the ampacity of the conductors is -- to state what
19 the ampacity of the conductors is even though the piece of
20 equipment may be rated greater to prevent overload of
21 those conductors. And this doesn't apply to one- or
22 two-family dwelling feeders.

23 WAC 225. So this is clearance from buildings for
24 conductors. A flat roof requires eight feet of clearance
25 for an overhead conductor span. And that's in both

1 Article 225 and Article 230.

2 When you have a carport or a let's say a back patio
3 cover, the Department had a rule in WAC 230 to say that
4 that is not a roof, which would allow a reduction in
5 clearance to three feet.

6 The NEC in 230 added an exception to say that where
7 the voltage between conductors does not exceed 300 and the
8 roof area is guarded or isolated, a reduction to three
9 feet is allowed. So guarded or isolated means not readily
10 accessible.

11 So carport covers, patio covers, those are all
12 covered in Article 230 of the NEC, but we're adding this
13 to Article 225 for feeders as well.

14 And then here is the allowance of the WAC rule that
15 allowed the reduction in clearance to three feet. We've
16 eliminated that because the exception in the NEC went in
17 to say that a roof that's not really accessible is allowed
18 to reduce those conductors to three feet clearance.

19 WAC 230, 042, this is the labeling requirement for
20 service conductors that have a lesser ampacity than the
21 service equipment. They have to be labeled.

22 What we added to this one was it does not apply to
23 one- and two-family dwellings.

24 And we added the comment from the TAC committee was
25 what the label should say. And it should say "service

1 conductor ampacity is." And so we list what the service
2 conductor ampacity is on the label.

3 CHAIRPERSON PREZEAU: So Rod, if I can just -- I want
4 to call your attention to -- I want to go back to 230 in
5 the comments that are in the track changes. So it says,
6 you know, this was the departmental proposal, no longer
7 needed as NEC 230.24(A). But it goes on to say the TAC
8 supported this concept and discussed the change to the WAC
9 225, but that this language change was made after the
10 technical advisory committee meeting.

11 MR. MUTCH: Right.

12 CHAIRPERSON PREZEAU: The reason I say that is just
13 -- because historically, you know, several Board members,
14 myself included, have either as Board members or as
15 stakeholders participated in the technical advisory
16 committee process.

17 And I just want to remind folks that normally -- you
18 know, I'm assuming -- I wasn't there at this one. That
19 was in December of 2018.

20 But historically it's customary that if the technical
21 advisory committee, there's not overwhelming support or
22 it's not clear for a stakeholder, the Department proposal,
23 it doesn't move on. Was that the same rules of operation
24 in December?

25 MR. MUTCH: Yes.

1 So the technical advisory committee serves the same
2 role as the Board basically, to advise the Department.
3 And so we received the advice of the technical advisory
4 committee.

5 And this comment that you're talking about here is
6 the change that we discussed in WAC 225 was not there at
7 the TAC meeting. And so the comments from the TAC were,
8 well, you know, let's include that same proposal in
9 Article 225. And so that's what I changed after the TAC
10 meeting.

11 CHAIRPERSON PREZEAU: But that was the consensus of
12 the committee?

13 MR. MUTCH: Yeah.

14 CHAIRPERSON PREZEAU: Okay.

15 MR. MUTCH: There were -- there are some things in
16 here that the Department chose to revise and move forward
17 after the TAC committee and present those to the Board for
18 their discussion as well.

19 So I -- in that list of things that changed after the
20 TA meeting, that's all listed there.

21 Does that answer your question?

22 CHAIRPERSON PREZEAU: Yep. Thank you.

23 MR. MUTCH: Okay. Let's go down to WAC 230, 070.
24 This one is just a relocation. So it's the requirement
25 that says you can't have panels in a shower room,

1 bathroom, clothes closet. And it applies to subpanels as
2 well. So we moved it out of WAC 230 and put it into WAC
3 408 so that it applies to all panelboards.

4 WAC 250, paragraph (3), is a clarification that when
5 -- when -- so for rod pipe and plate electrodes other than
6 those that are installed with the exception to subsection
7 (2) of this section. So when you build a building on a
8 foundation, you have to install a concrete-encased
9 electrode. If you don't install it, a ground ring is
10 required. Or the exception, number (2) is you can install
11 another electrode system and test it to 25 ohms or less.
12 If you do that, you still have to test it.

13 Paragraph (3) says that if you install -- if you
14 don't test your ground rods, you have to install two of
15 them, then you're done. So this just clarifies that this
16 section doesn't apply to a test that's required if you
17 don't install a concrete-encased electrode.

18 Some of this stuff's kind of hard to explain. But
19 please ask questions if you don't get it.

20 CHAIRPERSON PREZEAU: This is where it's nice is that
21 this Board is pretty wonky in terms of -- just like you
22 are -- in terms of code. And so I don't know about
23 anybody else, but those words make perfect sense to me.

24 MR. MUTCH: Excellent.

25 Okay. So here's WAC 408. And this is where we

1 relocated the requirement that service panels, subpanels
2 and similar equipment can't be installed in clothes
3 closets, toilet rooms and shower rooms.

4 WAC 410, this kind of clarifies -- so when you have a
5 -- let's say a change on a light fixture with a branch
6 circuit coming down the chain supplying the light fixture,
7 it's been interpreted in the past that that branch circuit
8 would have to have stranded conductors going to it because
9 of the requirement for fixture wires to have stranded
10 conductors for movable or changing parts.

11 That doesn't apply to the branch circuit. That
12 applies to the listed fixture wire. Okay?

13 So we clarified in here that the requirements for
14 stranded conductors don't apply to the branch circuit
15 conductors. Branch circuit conductors are installed in
16 accordance with the chapter 3 wiring methods that they're
17 installed to. And they're not required to be stranded if
18 they are, you know, on a chain.

19 We've added in WAC 430 the allowance for IEC motors
20 to be used in addition to the NEMA motors. A NEMA
21 representative was at the TAC committee and said that the
22 IEC specifications are very similar to the NEMA
23 specifications for motors.

24 WAC 440, this is just a title change. We changed
25 this from WAC 424 previously and put it into 440, but we

1 didn't change the title. So WAC 440 is a reference to air
2 conditioning and refrigerating equipment.

3 And the WAC rule itself is when you do not have to
4 have a disconnect for an indoor unit of a split HVAC
5 system.

6 We had a Currents article that said you don't have to
7 put the disconnect in there as long as it's lockable, it
8 disconnects the indoor unit, and the indoor unit -- the
9 location of the indoor unit is identified at the outdoor
10 unit. So we added that language into the rule that was in
11 the newsletter.

12 WAC 501, this coordinates a Health Department rule
13 for septic systems. On-site sewage systems have to have
14 audible and visual alarms. And the alarm must be placed
15 on a circuit independent of the pump circuit. That's in
16 the Health Department regulations. That's not in the
17 electrical code. So what happens is an electrician wires
18 the septic system with the pump and the alarm on the same
19 circuit, the Health Department catches it and makes them
20 go back and put a separate -- requiring a separate
21 circuit. So hopefully this'll catch that.

22 WAC 514, this removes some requirements because the
23 2017 NEC is now clear regarding the location of the
24 disconnecting means, whether it's an unattended or
25 attended facility and the distances. So we moved that

1 WAC rule.

2 Paragraph (7) of WAC 514 is a new requirement, and
3 it enforces a Department policy that's already there.

4 When you have a maintenance and service disconnect
5 on a dispenser, the NEC requires that you must remove all
6 external voltage sources for maintenance and service of
7 dispensing equipment. And this rule clarifies that each
8 dispenser must be disconnected individually so that you
9 can work on the dispenser without shutting down the entire
10 facility.

11 WAC 600 allows field evaluation of a sign. It just
12 wasn't listed in there. It says all electric signs and
13 outline lighting must be listed. And we added "or field
14 evaluated by a testing laboratory accredited by the
15 department" which accomplishes the field certification of
16 the sign.

17 CHAIRPERSON PREZEAU: Does that just codify
18 Department practice, historic practice?

19 MR. MUTCH: Yes.

20 And that wasn't really published. It was just
21 allowed that a sign could be field evaluated.

22 WAC 620 is a new section in the WAC that coordinates
23 some rules with the elevator section regarding where the
24 disconnect in an equipment room goes.

25 Again, there's no specifications that the disconnect

1 be within 24 inches of the strike side of the door when
2 you enter the equipment room.

3 So the electricians would install the disconnect for
4 the elevator. And then the elevator inspector would come
5 in and say, "No. Our rules require this."

6 So there's several rules here that are in the
7 elevator section's requirements that we are adding to
8 electrical requirements to clarify that those have to be
9 complied with.

10 WAC 690, we've deleted some requirements that are now
11 in the NEC. 690, 053 clarifies DC current for PV's and
12 the disconnect label that's required.

13 WAC 700, equipment identification. Now, this one is
14 the 2017 NEC. In addition to marking requirements for
15 enclosures of emergency systems, they added marking
16 requirements for receptacles. And they said that wiring
17 methods for an emergency system had to be marked every 25
18 feet, but they didn't say what the marking should be.

19 So our current rule says that emergency system
20 enclosures have to be orange in color. So we're extending
21 that orange coloring to the marking -- the new marking in
22 the NEC for receptacles and for raceways.

23 Now, where that presents a problem is typically
24 isolated ground receptacles are orange. So that's
25 something, you know, may or may not be a good thing.

1 BOARD MEMBER BURKE: That's what Boeing uses; orange
2 for 2400 volt.

3 MR. MUTCH: Yeah.

4 So I'm thinking we need to rethink this one a little
5 bit because of the isolated ground receptacle. We've
6 already got the orange color for emergency systems. But
7 the only conflict is the isolated ground receptacles are
8 typically orange as well.

9 So any advice the Board may have on that would be
10 helpful.

11 BOARD MEMBER CUNNINGHAM: Well, they can be orange.
12 But they can also be ivory with a little triangle.

13 MR. MUTCH: True.

14 BOARD MEMBER CUNNINGHAM: Are you saying that they
15 cannot be orange any longer?

16 MR. MUTCH: No. We're saying that the emergency
17 system receptacles --

18 BOARD MEMBER CUNNINGHAM: (Inaudible -- talking over
19 each other)

20 MR. MUTCH: -- orange in color. But -- yeah, that's
21 not required that the isolated ground receptacles can't be
22 orange in color. But it would create confusion.

23 CHAIRPERSON PREZEAU: So it's probably not a great
24 idea.

25 MR. MUTCH: Right.

1 BOARD MEMBER BURKE: Every hospital out there --

2 (inaudible)

3 MR. MUTCH: So chew on that for a little bit and let
4 me know what you think. It may be that we would need to
5 ident -- because the NEC requires identification of
6 emergency system receptacles. We're already using orange
7 for identification of enclosures. And so how do we
8 identify emergency system receptacles is the question.

9 I'll move on. And if you have comments on that, let
10 me know.

11 WAC 705, this is the requirements for a disconnecting
12 means for supply-side interconnection. And it's adding
13 the requirement that the grounding and bonding must be in
14 accordance with applicable requirements for an additional
15 service even though it's not -- it's not defined as a
16 service.

17 So a supply-side PV interconnection is connected
18 ahead of the service conductors, and it's a disconnect,
19 but it doesn't meet the requirements for a service
20 disconnect. So we have to clarify that the wiring methods
21 and the grounding and bonding must meet the requirements
22 for an additional service because it doesn't -- it's not
23 defined as a service disconnect.

24 We also say that it's -- since it's not a service
25 disconnect, it does not have to be grouped with the other

1 service disconnects on the building. That was a comment
2 from one of the TAC members that said they felt that it
3 should be grouped together with all the disconnects. But
4 the NEC doesn't require grouping except for the up to six
5 service disconnects for one service.

6 WAC 900 is the plan review requirements. And this
7 kind of clarifies the intent and changes the wording. So
8 these are items that do not require plan review. And so
9 previous language said projects that result in an
10 electrical load reduction don't require plan review.

11 But what about projects that are the same? It's a
12 like-in-kind replacement and the load is not increased.

13 So we changed the language to say if you do not
14 increase the load, that it doesn't require plan review the
15 same as if you reduce the load.

16 And this -- there's three changes here that pretty
17 much accomplish the same thing. We did that in paragraph
18 (ii) and (iii).

19 Then down below in paragraph (v)(D), we said service
20 or feeder load calculations are not increased by more than
21 five percent as opposed to service, you know, for feeder
22 load calculations are increased by five percent or less.
23 See the difference? It's just -- if you have a load that
24 doesn't change, we don't want to do plan review.

25 This is permit requirements in WAC 901. We have a

1 list of exempt items from permitting.

2 And in paragraph (7)(c) there is a list of items that
3 are exempt from permits.

4 You'll see the same change in licensing requirements
5 in WAC 925.

6 We added antennas for wireless animal containment
7 fences. Consolidated the items into three items instead
8 of five.

9 So we're seeing a lot of these antennas, and the
10 question comes up: Do I have to have a permit for that?
11 Well, it's just an antenna. You bury it in the ground,
12 and the pet has a collar on it that won't let him go past
13 it. So that's not an electrical installation; it's a
14 piece of wire in the ground, and we're saying that that
15 doesn't require a permit.

16 WAC 906, inspection fees. This is just deleting some
17 language that is not needed.

18 So this is the fee items for mobile homes and modular
19 homes. Right below this in paragraph (f) are the fee
20 items for mobile home parks and RV parks. So we're
21 eliminating the title "mobile home parks, RV parks" from
22 (e) because it's already down in (f). It's a separate fee
23 section. It doesn't change the fees. It doesn't change
24 any other requirements. Just a title change to make it
25 more accurate.

1 WAC 908. So this is an attempt to allow all the
2 low-voltage cable that's associated with installing a
3 like-in-kind replacement of a furnace. And let's say they
4 install a new heat pump. The new heat pump circuit would
5 have to have a permit fee for the heat pump circuit. But
6 this associated low-voltage wiring is going to be allowed
7 on the same Class B label as the like-in-kind replacement.

8 So it allows all of that low-voltage wiring to be
9 done with one Class B label instead of having to have two
10 Class B labels, one for the like-in-kind furnace
11 replacement and another one for the new cable going out
12 to the heat pump.

13 CHAIRPERSON PREZEAU: Is that again another example
14 of maybe -- is that codifying the practice of the
15 Department?

16 MR. MUTCH: It's -- it was an inconsistent practice
17 of the Department. Some inspectors would look at the
18 wording and say, "Oh, you got to have two Class B labels,
19 one for the changing out the wiring on the replacement,
20 but you're running a new cable over to the new heat pump,
21 so we're going to require another Class B label for that.
22 And it's the same type of inspection. This clarifies
23 that.

24 WAC 909 is fees for certificates of contractor
25 licenses. And we're adding to the item for journey level

1 and specialty electrician certificates. We're adding
2 reciprocal certificates as well. Because there's a
3 proposal to have a reciprocal certification program for
4 the state. So we wanted to put the fee in for that. It's
5 not really a new fee; it's a new type of license that
6 requires a fee. So ...

7 CHAIRPERSON PREZEAU: So you're just creating a place
8 in the anticipation or in the hope that there is in the
9 future --

10 MR. MUTCH: Right.

11 CHAIRPERSON PREZEAU: -- a reciprocal path.

12 MR. MUTCH: If we have a reciprocal agreement with a
13 state, we would be able to create -- give them reciprocal
14 certificates. But the statute says we can't do it for
15 free; we have to put a fee in for it. So ...

16 Paragraph (d), we are -- further down in the WAC in
17 942 I believe, we are extending -- there's a WAC that says
18 that affidavits of experience must be submitted within 30
19 days of renewal. And we're changing that to say within
20 180 days of expiration of the certificate. It gives the
21 trainee a little bit more time to gather the experience
22 from the contractor, and it sets the date with the
23 expiration of the certificate instead of the date that
24 they renew it. And so this is the fee for --

25 CHAIRPERSON PREZEAU: Oh. Because you control the

1 expiration date, but you don't control the renewal date.

2 MR. MUTCH: Right. That's right.

3 So this is the fee for renewal for the trainee update
4 of hours.

5 And so previously what it said is where the training
6 hours are submitted outside the renewal period stated in
7 942 which is 30 days, we're changing that, so we went back
8 and changed this to say submitted more than 30 days after
9 the expiration date of the certificate. The fee stays
10 exactly the same. If they submit it more than 30 days
11 out, they have to pay this fee. If they do it at the time
12 of renewal, they get it with their renewal. So -- but
13 again, that's another hard one to explain.

14 WAC 915 is the civil penalty schedule. We noticed
15 that the -- and we've had comments about the penalty for
16 contracting without a license ... has been in place since
17 1984 I believe, something like that. So we're proposing
18 to increase the penalties for contracting without a
19 license. In most cases doubling them to -- from 500 to
20 1,000 for the first offense.

21 Paragraph (11), this is just to add some -- there
22 were no subparagraph headings here, so it got confusing
23 when we were talking about whether it's a Class B offense
24 or if it's a other Class B offense. So we just put the
25 headings in there to designate which subparagraphs we're

1 talking about.

2 Same thing with paragraph (14). We just added
3 subparagraph headings to that.

4 None of the penalties changed, just clarified which
5 penalties -- to identify them.

6 So this one -- WAC 920. So there's actually two
7 proposals here I believe. Okay. So there were two
8 stakeholder proposals for adjustment of the HVAC work
9 scope presented to the TAC committee submitted to the
10 Department. Now, the TAC didn't support the proposals as
11 written. There were comments about, you know, it's very
12 broad. There was discussion.

13 So let's take the first one in paragraph (f). This
14 was a proposal to install, repair, replace and maintain
15 circuits from the outdoor unit supplying the indoor units
16 of a split HVAC system. So that branch circuit conductor
17 between the outdoor unit and the indoor unit of a split
18 system is currently not allowed to be done by the 06A
19 specialty. That's a branch circuit installation. It's
20 not within their work scope.

21 The stakeholder proposal was to allow the HVAC
22 specialty to install that circuit. The comments from the
23 TAC were that it was very broad.

24 The Department came up with some alternative language
25 for consideration by the Board to get your input on this

1 language.

2 So the changes basically were to limit it to located
3 in dwelling units. The wiring method must be limited to
4 cable type as specified by the manufacturer of the HVAC
5 system, and cable to each unit is limited to 100 feet in
6 length. The cable's protected by an overcurrent device
7 located in the outdoor unit. And all HVAC system
8 components are listed by a testing laboratory and includes
9 manufacturer's instructions for the cable installation and
10 termination.

11 So I suspect there's going to be some discussion on
12 this item as well as the next item. So I'm open to your
13 comments on paragraph (F) at this time.

14 CHAIRPERSON PREZEAU: So I'll jump in. I'm not sure
15 that -- so Rod, I have in front of me the stakeholder --
16 the language in the stakeholder proposal that was rejected
17 by the technical advisory committee. And I don't see at
18 first blush here this morning -- or this afternoon how the
19 Department's proposed language is more restricted than
20 what the stakeholder proposal that was rejected by the
21 committee, their language.

22 MR. MUTCH: I don't believe -- I think I can put the
23 stakeholder proposal up there if you'd like if that would
24 be helpful.

25 So there's no description of the length of the

1 circuit. So that was a limiting factor. There's no
2 mention of it being for dwelling units. That was another
3 limiting factor that was added.

4 The stakeholder proposal had the last two items in it
5 I believe. Installation must be specified.

6 So really the limiting factors were the length of the
7 cable and the fact that it would be installed in dwelling
8 units. That's -- I believe that's what's different about
9 this proposal and the stakeholder proposal that was
10 rejected by the TAC.

11 CHAIRPERSON PREZEAU: And then -- I just -- for
12 clarification, this language that's in front of us was not
13 voted on by the technical advisory committee, these
14 modifications to the stakeholder --

15 MR. MUTCH: No. This was done after the TAC meeting
16 based on comments at the TAC meeting.

17 Some of the folks that were at the TAC meeting
18 mentioned the fact that there was no restriction on the
19 type of facility. And I remember the comment about the
20 length of the conductors at the TAC meeting.

21 So I don't know if that would have -- if this
22 language would have changed what the result of the TAC
23 was. But that was -- that was to bring this proposal
24 before the Board rather than not bring it before the
25 Board.

1 CHAIRPERSON PREZEAU: No, I -- I'm not questioning
2 the motive of the Department, right? I mean, it's not --
3 -- but I agree with you that your last comment, right? is
4 had this -- I certainly understand the rulemaking process,
5 participated in it before on the technical advisory
6 committee as a Board member, as a stakeholder and here at
7 this Board.

8 I have -- I'm uncomfortable with this Department-
9 proposed language for a couple of reasons. One is because
10 -- one is process, right? So because this wasn't --
11 because the customary practice has been, right? is if it's
12 not approved by the technical advisory committee, it
13 doesn't move on. Now, I understand that we've even
14 reviewed some language this morning that I did not object
15 to that wasn't concurred with at the technical advisory
16 committee, but based on discussion that has to do with
17 making sure that the electrical installations in
18 Washington state are safe and appropriate.

19 I would argue that changing a broadening scope of
20 work is a -- it fits in a different category in terms of
21 making amendments or modifications to something -- to a
22 proposed increased scope of work that was considered at
23 the technical advisory committee and rejected. And part
24 of that is because it's highly possible -- but we will
25 never know the answer to this -- in the event that in real

1 time at the technical advisory committee, that these
2 additional safeguards of only in dwelling units and
3 limited length, we won't know whether or not the technical
4 advisory committee, what their thoughts would be on that
5 because they were never asked that. And I understand
6 that. And they might have behaved differently, right?
7 And they might have -- we might be in a position where we
8 have greater understanding of what their position is. We
9 might have entered into different discussion or offered
10 different arguments in the event that this was put in
11 front of them.

12 My -- so I'm uncomfortable with that. But I'm also
13 uncomfortable with knowing that with this particular
14 certificate -- and it's my understanding that this
15 practice or this scope of work doesn't only apply to 06A
16 certificate holders, but it would apply to 06B certificate
17 holders. And even if that's not an accurate statement, it
18 applies to 06A certificate holders. And since the
19 inception of this or the creation of this specialty
20 certificate, their scope of work has been expanded five
21 times since the subspecialty was created. But yet there
22 has been no -- so it's -- correct me if I'm wrong -- I
23 believe this would be the sixth scope of work expansion
24 for this specialty since this certificate inception. And
25 during that same period of time there has been no increase

1 in on-the-job training requirements to go along with those
2 scope-of-work increases.

3 And additionally, it's my understanding that there
4 has been no -- that the subspecialty journey level exam
5 for 06A certificate holders has perhaps not reflected the
6 multiple expansions of scope of work.

7 I certainly would love to hear other comments from
8 Board members. But -- I don't want to stifle that
9 conversation. But I'm -- so perhaps I should keep my
10 final comment to myself and let other Board members weigh
11 in.

12 Jason.

13 BOARD MEMBER JENKINS: Madam Chair, from attending
14 the TAC meetings, there is many of the things that aren't
15 addressed with your changes you put up here, a) like you
16 mentioned already about the training.

17 CHAIRPERSON PREZEAU: Oh, because you were there.

18 BOARD MEMBER JENKINS: Yes.

19 And so like the training issue that's not being
20 presented here. And even inside their proposal, they're
21 saying, Yeah, we're not qualified to do the job in some
22 cases; therefore, we want the electricians to come back
23 and verify our work. That's what was not -- multiple
24 proposals. And so it doesn't address anything that has to
25 do with the training for the actual licensing.

1 There's many other things that just can't be
2 addressed with a simple couple changes here that you put
3 into this proposal.

4 CHAIRPERSON PREZEAU: Well -- and I'm even
5 uncomfortable with the fact that those cables, you know,
6 can be as long as 99 feet in length.

7 Dominic.

8 BOARD MEMBER BURKE: And most of those conductors
9 between the units are still 240 volt, 30, 40, 60 amp. So
10 where they -- they've kind of stood behind the definition
11 of control wiring, and they call it control because
12 there's a contactor that's controlled by, you know, other
13 devices. But it's -- in my opinion, it's just not
14 controlled; it's a branch circuit, and it is 240 volt just
15 like -- (inaudible)

16 CHAIRPERSON PREZEAU: Any other comments from Board
17 members?

18 Well -- so then my -- I'm -- when we get to it, my
19 recommendation is going to be to strike this language.

20 I mean, I'm interested in having a conversation by
21 all means. I'm always -- we're always interested in
22 having a conversation. But because of the way the process
23 played out and --

24 And, you know, Jason, you just -- and I wasn't there.
25 But you give credence to the fact that --

1 You know, I appreciate the Department trying to take
2 a stab at this. And I know that it's -- you know, it's
3 going to continue on. There's public comment, public
4 stakeholder comment on this.

5 BOARD MEMBER JENKINS: Madam Chair?

6 CHAIRPERSON PREZEAU: Yeah.

7 BOARD MEMBER JENKINS: I'd like to bring up is that
8 at some point also this kind of got shut down during that
9 meeting. And so there's probably other items that would
10 have been brought up had they said this is going to get
11 pushed further. Because there is other things that even
12 -- I had comments also, but since it got stopped, I went,
13 Okay, well, there's no reason to keep regurgitating this.
14 So ...

15 CHAIRPERSON PREZEAU: Okay. Any other thoughts?

16 All right.

17 MR. MUTCH: Okay. Next. And this -- the placement
18 of these two proposals is in general HVAC/refrigeration
19 systems section. So it does apply to both 06A and 06B.

20 The next one is an exception that has to do with a --
21 let's say a gas furnace has an enclosure with a disconnect
22 switch mounted to it. And so the HVAC person comes to do
23 the replacement -- like-in-kind replacement of gas
24 furnace. They're not allowed to remove that disconnect
25 switch enclosure.

1 Typically sometimes it's a handy box with a toggle
2 switch in it. They can't remove that disconnect switch
3 enclosure and replace it onto the new furnace. That would
4 be not within their work scope. So this proposal is an
5 attempt to allow them to do that.

6 This was again rejected by the TAC committee. And
7 then there were some discussions on the size. And it's
8 again another attempt to instead of not bringing it before
9 the Board to try and bring it before the Board to get your
10 feedback on this proposal as well.

11 I believe there was general agreement on the concept
12 in this wording, but this -- again, this wording was not
13 presented to the full TAC committee and acted on.

14 CHAIRPERSON PREZEAU: Well -- and I actually -- you
15 know, I actually don't object to this language. But I
16 would offer an amendment, which is -- because it says,
17 "... HVAC/R equipment is being replaced, this specialty
18 may remove" -- and it says "and replace a disconnecting
19 means" I would -- given what you just described to
20 me, and when I read the stakeholder proposals, you know,
21 what that looks like, is I would prefer if it said "...
22 this specialty may remove and reinstall a disconnecting
23 means" Right? Because then it's very clear that
24 exactly what you've just described. You have a furnace
25 with a disconnect, a toggle switch on it. They're going

1 to replace the furnace, take that junction box off, put it
2 back on. Because that's the intent, right?

3 MR. MUTCH: Uh-huh. I believe that was the intent of
4 the proposal.

5 CHAIRPERSON PREZEAU: So I could support that if it
6 says "reinstall."

7 Jason, do you ...

8 BOARD MEMBER JENKINS: I'm just going over some of
9 the notes on it.

10 I think some of the issues we ran into was a not
11 like-in-kind original proposal. I'm kind of -- it kind
12 of caught me off guard there.

13 MR. MUTCH: So I'm just -- sorry. I'm just looking
14 at the comments that I made at the TAC meeting on that
15 proposal.

16 SECRETARY THORNTON: Tracey?

17 CHAIRPERSON PREZEAU: Steve.

18 SECRETARY THORNTON: Yeah, the intent was that they
19 take off the disconnect that's there and able to put back
20 on what was there. So if it said "reconnect existing" --
21 because even if it just says "reconnect," it doesn't say
22 anything about whether it's new, old or maybe it just says
23 "reconnect existing." That way you can take off what was
24 there and put it back on, but you can't change it. If
25 it's broken, then somebody else is going to have to do it.

1 But the intent was that they could go and take a
2 furnace out, but if there was a disconnect on it, now they
3 have to hire an electrician to come in and do that little
4 part. So maybe reconnect existing fixes that.

5 CHAIRPERSON PREZEAU: Yeah, because the idea here is
6 if the furnace is -- you know, has similar voltage and
7 amperage that the existing disconnecting means on the
8 existing furnace, right? Those two -- you know, the
9 furnace that's the new one coming in has similar voltage
10 and amperage characteristics, and the disconnecting means
11 is mounted on the existing furnace that's going to be used
12 on the new one, the replacement, then it seems incredibly
13 reasonable to me that they can remove that disconnecting
14 means, and then just reinstall it.

15 And I'm just looking for a little bit of reassurance
16 here, right? Because if that new furnace that's coming in
17 has substantially different voltage and amperage
18 requirements of an existing disconnecting means on the
19 existing furnace that is scheduled to be replaced, that
20 that disconnecting means is no longer sufficient for the
21 new furnace, this Board -- this language would not allow
22 them to mount a new disconnecting means that's consistent
23 with the different voltage and amperage characteristics of
24 the new furnace. Does that make sense?

25 MR. MUTCH: Yeah. It allows them to replace, or as

1 you proposed, reinstall with a like-in-kind disconnecting
2 means enclosure rated not more than 20 amps.

3 SECRETARY THORNTON: So basically it's limited to
4 some kind of a gas furnace. Gas, propane. It can't be
5 electric. You're not going to get one that runs on a 20
6 amp circuit.

7 CHAIRPERSON PREZEAU: Yeah. No, I -- yeah.

8 BOARD MEMBER BURKE: So you're also putting them in a
9 panel to shut it off.

10 CHAIRPERSON PREZEAU: I'm sorry?

11 BOARD MEMBER BURKE: You're also allowing them in the
12 panel to shut it off ... in theory.

13 CHAIRPERSON PREZEAU: Well, hopefully. Right? I
14 mean, this should be your -- (inaudible). You just have
15 to turn the breaker off, right? Lock it out?

16 Do you have -- do you have concerns about this,
17 Dominic?

18 BOARD MEMBER BURKE: I'm thinking it through.

19 MR. MUTCH: So while you're thinking, this is the
20 actual page from the TAC committee meeting. We presented
21 the proposal -- stakeholder proposal. The TAC -- in the
22 comments right up here is what I wrote at the TAC meeting.
23 TAC does not support as written. The TAC supports
24 allowing the concept shown in the edited wording.

25 I believe at the TAC meeting there was a break, and

1 the proposer and some of the TAC members got together and
2 came up with some alternatives.

3 So I put this up at the TAC meeting, replacement of
4 an existing disconnecting means with a like-in-kind
5 disconnecting means. And then we reviewed that, and the
6 TAC supported that concept, not necessarily the specific
7 wording, but I believe they supported that concept because
8 that's what I wrote down.

9 Then I sent this -- I believe I sent this to all the
10 TAC members after the meeting too.

11 CHAIRPERSON PREZEAU: Not that I would ever question
12 your character, Rod ...

13 But Jason, is that your recollection?

14 BOARD MEMBER JENKINS: That's -- I believe so. I'm
15 just going over my notes. And that's why it's kind of
16 gray.

17 But yeah, the original question was, What was the
18 proposer's idea? Was it to just be able to remove and
19 reinstall a system? Or was it to be able to replace the
20 items on there? And we didn't have that determination.
21 And so the group did come back -- a couple people -- I
22 had two people ask for changes on that and to be
23 re-represented again.

24 MR. MUTCH: Yeah. So based on that, that's where
25 this language came from where it's -- we've added the like

1 in kind and where the HVAC equipment is being replaced.

2 CHAIRPERSON PREZEAU: Well, I -- are you comfortable
3 that that existing language -- you know, with that word
4 "replace" because it's in the sentence with a like-in-kind
5 disconnecting enclosure? Is it -- am I getting too far
6 down in the weeds on that reinstall language?

7 MR. MUTCH: Well, enforceability -- I think this is
8 enforceable. I think what happens is they are allowed to
9 replace the HVAC equipment. And if the current equipment
10 has the disconnecting means attached to it, they would be
11 able to remove it and reinstall with a like-in-kind
12 disconnecting means not -- rated not more than 20 amps.
13 So it doesn't allow them to put in a different -- I
14 suspect they could probably put in a new one with that
15 language, but they -- it would have to be like in kind.
16 It couldn't be a different-rated switch.

17 SECRETARY THORNTON: So what you could end up with
18 there is a handy box with a switch in it that comes off.
19 And when it goes back on, it might be a four square, still
20 with the same type of single-pole switch in it, but there
21 could be some new components to that and still in my mind
22 at least be like in kind if that's the word -- wording you
23 want to ...

24 MR. MUTCH: Well, the characteristics of the circuit
25 can't change.

1 SECRETARY THORNTON: Right.

2 The box that it was in might be able to --

3 MR. MUTCH: Yeah. Four square versus handy box.

4 SECRETARY THORNTON: Yeah. Still a single-pole
5 switch. Still 110 volts. Still ...

6 BOARD MEMBER SCHMIDT: I think based on the time that
7 some of these HVAC and heating systems -- (inaudible) --
8 as well. To survive it might be worthwhile to allow them
9 to replace the switch with the idea -- because otherwise
10 we might have someone that has a 20-year-old system with
11 a 20-year-old switch and because of what we do here, they
12 put that 20-year-old switch back in place which may not
13 be a --

14 CHAIRPERSON PREZEAU: The best option.

15 BOARD MEMBER SCHMIDT: -- the best and safest way to
16 do it. So the ability to say like in kind then and to
17 limit the amperage and the voltage, I think we're pretty
18 safe there.

19 CHAIRPERSON PREZEAU: Okay. That's a good point.

20 Any other thoughts?

21 MR. MUTCH: Okay. Next.

22 This is a clarification in 920 a little farther down
23 that the HVAC specialty can't install branch circuit
24 conductors except as specified in subsection
25 (2)(f)(iii)(F) above. That's the one for installing the

1 cable between the split-system units.

2 So if that proposal is rejected, this one would be
3 rejected as well.

4 WAC 925. This is the same change we made in the
5 permit requirements to allow the animal containment --
6 wireless animal containment fences and reorganizing the
7 list to make it more applicable.

8 This is the -- WAC 925 (13) leaseholders exemption.
9 So a leaseholder can perform work on their property as
10 long as it's not for rent, sale or lease of a new
11 building. And this clarifies that setting a manufactured
12 or mobile home is considered electrical work on a new
13 building.

14 So if they're intending -- they can do that if they
15 own it and if they are staying there. But if the intent
16 to rent or lease it, they have to -- an electrical
17 contractor has to do the work.

18 WAC 925, paragraph (22) is a clarification on the
19 manufacturers exemption. They can do initial calibration
20 testing and adjustment of components, but they can't do
21 new installation. Okay?

22 Paragraph (b) is clarified to say this exemption does
23 not include on-site assembly, installation, removal or
24 replacement.

25 So the word "assembly" is added because there was an

1 appeal of a citation, and the argument was there was a
2 difference between installation work and assembly work.
3 So we clarified that assembling a piece of electrical
4 equipment is equivalent to installing a piece of
5 electrical equipment.

6 This one is paragraph (25), and it's the plumbers
7 exemption that allows a plumber to do a like-in-kind
8 replacement of a household appliance that also has
9 plumbing attached to it. And this sentence that was
10 added was actually -- is already in WAC 920. And it says
11 for the purposes of RCW 19.28.091, the like-in-kind
12 replacement includes the appliance or any component part
13 of the appliance such as, but not limited to, the
14 thermostat in a water heater.

15 So that language is already in 920. And it applied
16 to plumbing work. But it's more appropriate to be added
17 here because this is where the plumbing exemption is.

18 CHAIRPERSON PREZEAU: So all you did was move the
19 language. There's no --

20 MR. MUTCH: We left it in 920 as well and we put it
21 here so that it's clear.

22 CHAIRPERSON PREZEAU: So it's duplicative. It's in
23 there twice.

24 MR. MUTCH: Yes, yes. Because if you're looking for
25 an exemption to the electrical licensing requirements and

1 -- (inaudible) -- not an allowance in the work scopes.

2 WAC 940 clarifies that when supervising a trainee is
3 considered to be working in the electrical construction
4 trade. So to supervise a trainee, you have to have a
5 current electrical certificate and you have to display it.

6 This is -- this is the exemption from certificates.
7 So the 925, the plumbers change, was the exemption from
8 contracting licensing. This paragraph (16), 940, is an
9 exemption from certificate requirements with the same
10 language in it as the contractor one, which allows them to
11 replace the appliance or any component part of the
12 appliance.

13 Then new paragraph (17), (18) and (19) are a
14 stakeholder proposal for reciprocal agreements between
15 Washington and other states.

16 CHAIRPERSON PREZEAU: So -- I'm sorry, Rod. Can we
17 -- I'm trying to keep up with you. You're pretty --

18 MR. MUTCH: It's up here (indicating his head/brain),
19 but it doesn't come out here (indicating his mouth) very
20 well.

21 CHAIRPERSON PREZEAU: No, no, no, no, no. You're
22 doing a terrific job.

23 I just found a -- I want to go back to the
24 supervising situation.

25 MR. MUTCH: Oh, okay.

1 CHAIRPERSON PREZEAU: Because your comment in the
2 track changes says -- clarifies certificate must be
3 displayed by supervising electrician while supervising
4 trainees. And I'm failing to understand how this language
5 actually accomplishes that.

6 MR. MUTCH: So in order to work in the electrical
7 construction trade, you have to have the certificate and
8 displayed.

9 A person that's supervising a trainee may be just
10 watching. He may not be actually engaged in the
11 electrical construction trade.

12 CHAIRPERSON PREZEAU: Oh, okay.

13 MR. MUTCH: So they say, I'm just watching that
14 trainee; I'm not required to display my certificate.

15 CHAIRPERSON PREZEAU: Okay. That's the piece that
16 was missing. Okay.

17 MR. MUTCH: So this clarifies that the act of
18 watching that trainee --

19 CHAIRPERSON PREZEAU: The act of supervising requires
20 to basically display.

21 MR. MUTCH: It is -- exactly.

22 CHAIRPERSON PREZEAU: Okay, now I'm tracking. Okay.

23 SECRETARY THORNTON: We've had scenarios where people
24 have said, I'm not working. I'm not working in the trade.
25 But they were supervising a person, so ...

1 CHAIRPERSON PREZEAU: I -- that would have never
2 dawned on me.

3 SECRETARY THORNTON: Yeah, yeah.

4 CHAIRPERSON PREZEAU: Now I understand. Now I
5 understand.

6 MR. MUTCH: Okay. So the reciprocal agreement
7 language in paragraphs (17) through (19), this was taken
8 from language that was in the 2009 WAC regarding
9 reciprocal agreements that was taken out when we abolished
10 the reciprocal agreements back then.

11 So we're -- this would allow Washington to enter into
12 reciprocal agreements with states that have equivalent
13 requirements for certification for journey level or
14 specialty electricians. And it's basically the same
15 language.

16 There is a provision in there for -- the 16,000-hour
17 provision. Oh, right there (indicating).

18 CHAIRPERSON PREZEAU: What is -- is that (B)?

19 MR. MUTCH: That's (B).

20 The individual makes a complete -- up here
21 (indicating) -- application for reciprocal agreement on
22 the form provided by the department. A complete
23 application includes -- so (ii) -- small Roman numeral
24 (ii) says evidence that the individual meets the
25 eligibility requirements of 191 by presenting a valid

1 certificate from the issuing state and (A) evidence that
2 the apprenticeship -- from an apprenticeship training
3 director that any journey level category applicant has
4 successfully completed an apprenticeship. (B) is evidence
5 that any journey level category applicant has worked in
6 the electrical construction trade for a minimum of sixteen
7 thousand hours.

8 This is a similar wording requirement where they
9 would accept someone who has completed an apprenticeship.
10 And if you haven't completed an apprenticeship, but you
11 can show that you've worked 16,000 hours they would accept
12 it.

13 CHAIRPERSON PREZEAU: And this is for a general
14 journeyman certificate. This does not apply to
15 subspecialties.

16 MR. MUTCH: Right. So that's -- in subparagraph
17 (ii) -- oh, yeah. It's in -- it's right in (A) and (B).
18 So this applies to journey level -- any journey-level
19 category applicant in (A). And (B), any journey level
20 category applicant. So (A) and (B) are only required for
21 journey-level applicants.

22 CHAIRPERSON PREZEAU: So this reciprocity language
23 allows for reciprocity in specialty categories if they
24 don't meet the graduation of the apprenticeship of the
25 16,000 hours?

1 MR. MUTCH: Yes. Because Washington doesn't require
2 apprenticeship completion for specialties. And so (a),
3 (b) and (c) applies to specialties as well, but (c)(ii)
4 says that the individual has to provide evidence that they
5 meet the eligibility requirements in the RCW. But then
6 (A) and (B) only apply to journey level because of
7 Washington's requirement for apprenticeship completion
8 effective 2023.

9 CHAIRPERSON PREZEAU: So I'm assuming that in the
10 event that there was -- Washington state entered into a
11 reciprocity agreement with another state, within that
12 documents would be some other governing language around
13 whether that reciprocity agreement was only for journey
14 level and/or it was for journey level and identifies
15 certain subspecialties, or specialties I should say? And
16 then it would have some enabling language about what that
17 -- what those qualifications look like for specialties?
18 Is that likely given that --

19 MR. MUTCH: So the qualifications are as -- they
20 would have to be equivalent to what our qualifications are
21 in 19.28.191 --

22 CHAIRPERSON PREZEAU: Okay.

23 MR. MUTCH: -- for specialties and for journey level.

24 And then this one goes on to say that for journey
25 level in order to get the reciprocal agreement, they have

1 to have either completed the apprenticeship or 16,000
2 hours if that makes sense.

3 CHAIRPERSON PREZEAU: It does. I'm actually excited,
4 right? This Board has talked -- I don't know -- many
5 times about reciprocity. And I'm excited to look at the
6 language.

7 MR. MUTCH: Okay. Moving on.

8 WAC 942. So this is where we begin to see in the
9 WAC that coming in July of 2023 is the requirement for
10 apprenticeship completion and that folks working in the
11 journey level category have to have their apprenticeship
12 enrollment credentials with them. So we put that
13 statement in the WAC so that they know that it's coming.

14 And then down below under paragraph (9) -- I'm
15 skipping the 180-day one for now. I'll come back to it.

16 Paragraph (9), this is the current requirement for
17 renewal of a certificate, and this will only be -- I'm
18 losing track here.

19 Okay, let's talk about certificate renewal, and then
20 we'll come back to the apprenticeship bill.

21 So here's where we said that within 180 days of
22 expiration date of the training certificate they have
23 submit their affidavit of experience. And then this one,
24 paragraph (9), when a trainee does not complete his basic
25 trainee classroom training, currently there's a process

1 where they can go ahead and pay the renewal fee, and they
2 go get active.

3 CHAIRPERSON PREZEAU: Which is the same for a journey
4 level or specialty journey level.

5 MR. MUTCH: Right, right.

6 That kind of violates the RCW where it says to renew
7 you have to have completed your basic training classes.
8 So we're proposing to eliminate the allowance for them to
9 renew and go inactive, and then when they complete their
10 training become active again.

11 So effect -- and we thought about doing it right now,
12 but we put this off until July of 2020. And when that day
13 comes, you have to have your classes completed in order to
14 renew. You can't renew first and then catch up with your
15 classes.

16 CHAIRPERSON PREZEAU: So this -- so the inactive
17 status of a trainee's certificate, that is staying in the
18 rule for now?

19 MR. MUTCH: Until July of 2020. And then effective
20 July 1, 2020, an individual may not renew a training
21 certificate until the required hours of training -- basic
22 training classroom education has been completed. So once
23 July of 2020 comes, we're not going to allow --

24 CHAIRPERSON PREZEAU: So you're going to give them
25 notice.

1 MR. MUTCH: Yeah.

2 CHAIRPERSON PREZEAU: Are you doing the same thing
3 on the journey-level certificates?

4 MR. MUTCH: No, we're not doing that on journey-level
5 certificates. And the thought was learning the trade,
6 they need to get that training. Okay? Someone who has a
7 journey-level certificate who's already learned the trade,
8 and let's say they want to renew, but maybe they're
9 deployed overseas, or maybe their life has changed to
10 where they're not going to work in the trade for a while,
11 and they don't want to take the classes, the CEU classes,
12 this would allow them to continue doing that.

13 So we made a distinction between someone that's
14 learning the trade and someone who's already learned the
15 trade and has the certificate.

16 But this puts trainees on notice that they need to
17 get their training done before their renewal date. It's
18 kind of -- everybody waits till the last minute. It just
19 makes it a little more --

20 CHAIRPERSON PREZEAU: And this -- the original
21 language, not this language that's on the screen or --
22 what language was -- because it says "TAC supports, no
23 opposed." Which -- which --

24 MR. MUTCH: So originally I believe we eliminated
25 this whole -- this whole section we eliminated.

1 CHAIRPERSON PREZEAU: So the technical advisory
2 committee was on record saying dump the whole thing.

3 MR. MUTCH: Right now.

4 CHAIRPERSON PREZEAU: And then after that, you guys
5 thought about it and said, Hey, let's give people a notice
6 period.

7 MR. MUTCH: Yes.

8 CHAIRPERSON PREZEAU: All right. I think that's
9 smart.

10 MR. MUTCH: Okay. Then back to the apprenticeship
11 bill. This is WAC 945 for qualifying for the exam. Until
12 July 1, 2023, we have our current process to qualify for
13 the exam. And effective July 1, 2023 -- this paragraph
14 is right out of the apprenticeship statute that says that
15 to qualify for the exam you have to have completed an
16 apprenticeship.

17 CHAIRPERSON PREZEAU: So before you go on, I want to
18 -- several Board members are up and moving around. I know
19 we're closer to the end of this conversation than we were
20 when we started. I am curious, again, we're approaching
21 on 2 hours since our last break -- or an hour and a half
22 since our last break.

23 Do we need to take maybe a five or ten minute I like
24 to call them bio breaks? We can get food and water -- is
25 that pretty consistent with everybody? I would like to

1 take a --

2 So can we come back at 1:30? Is that reasonable?

3

4 (Recess taken.)

5

6 CHAIRPERSON PREZEAU: So it is now 1:33. I just
7 wanted to make sure we had a quorum. We definitely have a
8 quorum because they're not all at the table.

9 So thanks everybody for accommodating that break.

10 And we -- remind us, Rod, if you will. Where are
11 we?

12 MR. MUTCH: We're at WAC 945, paragraph (9). So we
13 just talked about the apprenticeship bill going into the
14 WAC, paragraph (4).

15 And paragraphs (9) and (10), we have the same
16 changes. So this is just a change to the title because of
17 some confusion. So this is qualifying for a journey-level
18 exam from a state requiring electrical certification for
19 -- from a state that does not require electrical
20 certification. And we clarified that the electrical
21 certification that the State requires is for the work that
22 we're evaluating for the application.

23 Paragraph (11), we eliminated the shipyard experience
24 because the title -- and this is just in the title. This
25 paragraph (11) is exclusive to military experience.

1 So we've had some confusion about whether this would
2 apply to shipyard experience that's not in the military.
3 But if you read the requirement down in the text of
4 paragraph (11), it's talking about shipyard experience
5 and the military. So we just changed the title -- or
6 eliminated "shipyard." So it's now titled just "Military
7 experience."

8 CHAIRPERSON PREZEAU: Is there another place in this
9 rule where it talks about shipyard experience?

10 MR. MUTCH: No. I'm not sure the history on this
11 one. But ...

12 CHAIRPERSON PREZEAU: No way. That's got to be a
13 first.

14 MR. MUTCH: At some point they had some, you know,
15 shipyard -- and maybe Faith has more information about the
16 history of this if you're interested.

17 MS. JEFFREY: If you really want it, it's just
18 political history.

19 CHAIRPERSON PREZEAU: Let's just -- we'll tack that
20 on at the end for those ...

21 MR. MUTCH: It's just --

22 Okay. So this is paragraph (14), and it's new. And
23 it's another stakeholder proposal to allow journeyperson
24 electricians with a Red Seal endorsement to be eligible to
25 take the exam if they have had the Red Seal endorsement

1 for one year. This was in line with a temporary rule that
2 we had, and now we're putting it back into the WAC in
3 general.

4 WAC 960. This is just a editorial change to align
5 the text in paragraph (10) with the title above. And so
6 if -- or -- let's see. Is that right? No, that's not
7 right.

8 So paragraph (10) says if an individual fails -- it
9 used to say an electrician, examination or a part of an
10 administrator examination. That was when electrician
11 examinations were just one part. They didn't have
12 multiple parts. So this change reflects the fact that
13 electrician examinations now have multiple parts, and if
14 they fail a part of it, then this rule applies to them.

15 CHAIRPERSON PREZEAU: So when you're talking about
16 the parts, you're talking about the NEC part and the WAC/
17 RCW part.

18 MR. MUTCH: Right.

19 Okay. This is WAC 990, and this is where we defined
20 what serious noncompliance is.

21 So paragraph (2) says the department may revoke,
22 suspend certificates if, and then under (b), one of the
23 statements is if the license, certificate or permit holder
24 is judged to be incompetent to work in the electrical
25 construction trade. And then it listed as a master

1 electrician, journey level, specialty electrician. But it
2 didn't have electrical contractor or administrator in that
3 list. So if we judge an electrical contractor to be
4 incompetent or an administrator to be incompetent, we've
5 added that to the list of serious noncompliance.

6 CHAIRPERSON PREZEAU: What is an electrical
7 technician?

8 MR. MUTCH: I don't know what that is. I suppose we
9 could have eliminated that. I don't know what an
10 electrical technician is.

11 MS. JEFFREY: Back in the day, that was a term we've
12 used to refer to folks that were in the H --

13 MR. MUTCH: Some more history what?

14 CHAIRPERSON PREZEAU: So she -- Faith was saying that
15 historically that was a term we've used to refer to folks
16 that were operating in the HVAC portion of the industry.

17 So it is likely a antiquated term. Because it
18 doesn't -- if it doesn't exist anywhere else, then it
19 probably doesn't need to be in here.

20 MR. MUTCH: So I don't know that it would be a
21 problem to eliminate that.

22 CHAIRPERSON PREZEAU: Well, I'm not asking for that
23 action at this moment.

24 MR. MUTCH: Clean it up?

25 CHAIRPERSON PREZEAU: Yeah. Just make a note of it I

1 guess, and then -- because this is still -- this process
2 is still moving.

3 MR. MUTCH: Uh-huh.

4 SECRETARY THORNTON: Yeah.

5 MR. MUTCH: Okay. Under paragraph (3), paragraph (3)
6 says, For the purposes of this section, serious
7 noncompliance includes, but is not limited to, any of the
8 following. And then there's a list of items.

9 And (b) says, "The license or certificate was
10 obtained" -- and it used to say, "through error or fraud."
11 We've added "obtained, used, or allowed to be used through
12 error or fraud."

13 A person that has a certificate that allows someone
14 else to use it, they're allowing them to use it through
15 error or fraud, which probably wouldn't have applied
16 previously. So if they use a certificate, if they obtain
17 a certificate or if they allow someone else to use the
18 certificate, it's serious noncompliance.

19 We've added two items to that list. Refusing to
20 present a government-issued photo identification when
21 requested by an electrical inspector while working as an
22 electrician or trainee as required by 940, paragraph (3).

23 And cheating on an electrical certification
24 examination.

25 So those two items are -- if they go forward, those

1 would be considered serious noncompliance and could result
2 in suspension or revocation.

3 CHAIRPERSON PREZEAU: Do you think, Rod, that in
4 paragraph (i) that because it says working as an
5 electrician or a trainee, do you think it would be wise to
6 -- the word "specialty electrician" or does "electrician"
7 encompass all of that?

8 MR. MUTCH: I think if you put "specialty" in there,
9 then you have to put journey level in there as well. I
10 think "electrician" encompasses both specialty and journey
11 level.

12 CHAIRPERSON PREZEAU: All right.

13 MR. MUTCH: WAC 995 is added because of the bill that
14 passed allowing cities to do compliance for licensing and
15 certification. And this just adds the appeal instructions
16 for the cities. If the decision is reached in the cities'
17 appellate process, then it can be appealed to the Board.

18 And that's it. That's all the proposals.

19 CHAIRPERSON PREZEAU: As somebody that works for an
20 electrical supply manufacturer -- let's go back to this
21 296-46B-700. You want to go back to the orange.

22 And the reason why -- right? It was 700, right, Rod?

23 MR. MUTCH: Yep.

24 CHAIRPERSON PREZEAU: Emergency systems. But because
25 of your particular level of expertise, I'm just -- I hate

1 to put you on the spot. But in your mind, is there -- you
2 know, this, the last sentence, the cable or raceway and
3 receptacle marking required by NEC 700.10, subsection (A)
4 must be substantially orange in color. So now we're
5 talking about orange receptacles. And we had a
6 conversation earlier about the hospitals. Is there
7 another color receptacle to your knowledge that could
8 possibly -- now, I certainly also understand that right
9 now enclosures in boxes for emergency systems have to be
10 orange. So if we change the receptacle color, there's a
11 potential impact on inconsistency with what has been past
12 practice with the enclosures, right?

13 MR. MUTCH: (Nodding affirmatively) So the NEC added
14 the requirement that receptacles on emergency systems must
15 be identified as components of the emergency system.
16 That's what the NEC requirement is. And we looked at this
17 WAC requirement for the existing orange color and extended
18 that to the receptacles to identify them.

19 Maybe there's another method. Maybe we require
20 emergency system receptacles to have an identification
21 plate on them that says "emergency system receptacle." I
22 don't know.

23 CHAIRPERSON PREZEAU: That's probably a better idea.

24 BOARD MEMBER CUNNINGHAM: Madam Chair?

25 CHAIRPERSON PREZEAU: Yep.

1 BOARD MEMBER CUNNINGHAM: For what it's worth -- and
2 I'd like the hear some feedback from you. But we have --
3 (inaudible). It's so easy to corrupt that system. One
4 person -- (inaudible) -- especially if you have more than
5 one receptacle in a branch circuit, and it's a very easily
6 corrupted system. Now, there is the value of the
7 isolating ground. But there's kind of a reaction, right,
8 to shared neutral, no grounding, you're relying on the
9 raceway and -- (inaudible) -- so everything prior to 19,
10 whatever, 80. So we don't trust them -- (inaudible). I
11 think it's just sort of a slice of time in the buildings
12 that we're building, the reaction to bad grounding issues.
13 To have these receptacles going forward -- (inaudible) --
14 specified by engineers? Do they have any basis?

15 CHAIRPERSON PREZEAU: No.

16 BOARD MEMBER CUNNINGHAM: So it's a -- other than
17 potential confusion if somebody sees a -- (inaudible) --
18 it's going to make them unsure. Is it isolated ground or
19 is it emergency or is it both? So is there an issue
20 there? They may be orange?

21 BOARD MEMBER JENKINS: Madam Chairman?

22 CHAIRPERSON PREZEAU: Yeah.

23 BOARD MEMBER JENKINS: They're going to be identified
24 by the green -- (inaudible) -- and the customer could
25 drive what color the receptacle's going to be. But this

1 would drive what color the emergency receptacle would be.
2 And if the customer chose them to be orange, then there
3 might be a crash. But it's been a long time since I've
4 heard these IG receptacles -- I don't -- even if they were
5 orange, it's going to let you know something else is going
6 on, you're getting closer, you inspect, it's got the
7 triangle, then you know -- you can differentiate from that
8 point.

9 BOARD MEMBER CUNNINGHAM: And then reading through
10 NEC 700, I can't think of a lot of receptacles that get
11 connected to any -- to emergency branch anyway.

12 CHAIRPERSON PREZEAU: Well, that's helpful.

13 BOARD MEMBER CUNNINGHAM: You read the description of
14 the loads in the code that are intended for --
15 (inaudible). I don't have -- I don't see a big objection
16 considering that if you have a isolated ground receptacle
17 on -- and it's orange, it's going to have a green
18 triangle.

19 CHAIRPERSON PREZEAU: Yep. Okay.

20 BOARD MEMBER SCHMIDT: The only thing I might bring
21 up on that is that the challenge that I see with the
22 orange receptacle would require a great deal of -- in
23 order for it to be truly successful would have to take a
24 great deal of work because we'd have to go back to all of
25 the emergency systems that are in place now and somewhat

1 maybe require them to replace the existing receptacles
2 with orange receptacles, which might be costly as well as
3 time consuming; whereas, if you -- with your original idea
4 of labeling an emergency, that's not as --

5 CHAIRPERSON PREZEAU: Onerous.

6 BOARD MEMBER SCHMIDT: -- onerous as the alternate
7 would be. And -- because I mean, there's obviously a lot
8 of these circuits out there right now. And so it's
9 something we run into in low voltage a lot of times when
10 you try to -- you try to put a system in place, and then
11 you find in time -- or trying to retrofit old systems, it
12 becomes very difficult. And it becomes so difficult, in
13 most cases that's not done. So now the new code would not
14 necessarily make as much sense as one might think ... if
15 that makes sense.

16 CHAIRPERSON PREZEAU: I think so.

17 BOARD MEMBER SCHMIDT: So from my standpoint, I would
18 rather see -- put something up there -- (inaudible) --
19 label them. Because it's not as difficult to go back and
20 say, I'm going to go back to my circuits and label them or
21 my outlets and label them as would be I'm going to go back
22 and change them in order to make the system really work.

23 BOARD MEMBER BURKE: Adopting new code changes don't
24 mean you have to go back and do -- (inaudible)

25 MR. MUTCH: That would -- (inaudible -- talking over

1 each other).

2 Having to go back and update something --

3 SECRETARY THORNTON: Always with new installations.

4 MR. MUTCH: -- from the -- (inaudible -- talking over
5 each other)

6 BOARD MEMBER: No, I understand that.

7 MR. MUTCH: -- creates additional confusion because
8 you may have an emergency receptacle that's not orange,
9 and now the new ones that you've installed have to be
10 orange, so ...

11 BOARD MEMBER BURKE: (Inaudible -- talking over each
12 other.)

13 MR. MUTCH: Right. And so thinking this through
14 more, maybe the labeling is a better option than coloring.
15 I don't know.

16 BOARD MEMBER LaMAR: I think labeling gives different
17 areas to actually go back in and make the changes that
18 they want to update their safety practices as well. It
19 gives them more cost-effective options.

20 BOARD MEMBER BAKER: If you use the word like
21 labeling, I'm going to be -- I'm going to deal with
22 multiple inspectors throughout the state trying to figure
23 out what that means.

24 BOARD MEMBERS: (Talking over each other.)

25 CHAIRPERSON PREZEAU: Well, and you know, you guys

1 push back if I got this wrong. But I'm -- you know,
2 obviously I shared some concerns about a different rule.
3 I'm comfortable allowing this to go through the process
4 and saying, Hey, like let the -- get it back into the
5 hands of the industry and public comment and those
6 stakeholder meetings and see if a better idea surfaces,
7 or at least consensus is arrived at, right? Are you guys
8 comfortable with allowing this to continue to morph
9 through the process?

10 Because what ultimately has to happen today before
11 we move on is we have to make, as Rod indicated at the
12 beginning of this agenda item, we have to make a
13 recommendation to the Department about how we, you know,
14 regarding the rules -- the proposed rules or the -- yeah,
15 proposed rules as presented.

16 Dominic.

17

18 Motion

19

20 BOARD MEMBER BURKE: Can I make a motion?

21 CHAIRPERSON PREZEAU: Sure.

22 BOARD MEMBER BURKE: To strike this and leave it as
23 is and rely on NEC 700 that says you must label until --

24 MR. MUTCH: It just says, identify it as a emergency
25 system component.

1 BOARD MEMBER BURKE: Right, identify it. Leave it
2 on the -- strike this change, period.

3 ASSISTANT ATTORNEY GENERAL THOMURE: The motion is
4 to recommend.

5 BOARD MEMBER BURKE: Recommend.

6 CHAIRPERSON PREZEAU: So the motion is to recommend
7 to the Department regarding 296-46B-700 to strike the
8 proposed language as presented and refer back to the
9 language in the National Electrical Code.

10 BOARD MEMBER LaMAR: Second.

11 CHAIRPERSON PREZEAU: So it's been moved and seconded
12 to recommend to the Department in WAC 296-46B-700,
13 subsection (10) and subsection (4) that the proposed
14 language be removed and rely on the language in the
15 National Electrical Code.

16 Discussion on the motion? Seeing none, all those in
17 favor, signify by saying "aye."

18 THE BOARD: Aye.

19 CHAIRPERSON PREZEAU: Opposed? Okay.

20

21 Motion Carried

22

23 CHAIRPERSON PREZEAU: What -- you know, I made my
24 opinion pretty clear, but I'm curious if I'm in the
25 minority or if I'm in the majority regarding the scope of

1 language -- scope of work language that's included in
2 296-46B-920.

3

4

Motion

5

6 BOARD MEMBER JENKINS: I'd like to make a motion that
7 we strike the changes -- we recommend striking the changes
8 on the scope change of WAC 296-46B-920 (F) specialties --
9 HVAC specialty -- yeah, HVAC.

10 BOARD MEMBER BURKE: I second that.

11 CHAIRPERSON PREZEAU: Okay. So just for
12 clarification, it's been moved and seconded to recommend
13 to the Department to strike proposed language 296-46B-920,
14 subsection (2), subsection (f), subsection (iii),
15 subsection (F).

16 BOARD MEMBER JENKINS: And associated sections that
17 affect that.

18 CHAIRPERSON PREZEAU: Yeah. Because Rod pointed
19 out, you turn the page it's actually 296-46B-920,
20 subsection (2), subsection (f), subsection (iv),
21 subsection (B) because it references that language.

22 BOARD MEMBER JENKINS: Yes.

23 CHAIRPERSON PREZEAU: So that's your motion?

24 BOARD MEMBER JENKINS: Yes, it is.

25 CHAIRPERSON PREZEAU: And does the second ...

1 BOARD MEMBER BURKE: Yes.

2 CHAIRPERSON PREZEAU: Discussion on the motion?

3 Seeing none, all those signify by saying "aye."

4 THE BOARD: Aye (the majority).

5 CHAIRPERSON PREZEAU: Opposed?

6 BOARD MEMBER CUNNINGHAM: Nay.

7 CHAIRPERSON PREZEAU: Okay. Motion carries.

8

9 Motion Carried

10

11 CHAIRPERSON PREZEAU: So with that, the Chair will
12 entertain a motion to -- because we can't just go one by
13 one. So the Chair will entertain a motion to recommend
14 the balance of the proposed rule changes presented to the
15 Electrical Board on January 31, 2019.

16 Rod?

17 MR. MUTCH: Just a clarification on what that motion
18 says. So you said -- there's actually two proposals here.
19 So (f), small Roman numeral (i), large (F) is one
20 proposal. And then (f), small Roman numeral (iv)(A) is
21 another proposal.

22 CHAIRPERSON PREZEAU: Yeah, no. I -- so it's my --
23 so you guys keep me honest here. But what I believe we --
24 the intent was everything that -- the language proposal
25 that is in that subsection upper case (F), the

1 recommendation is to strike that language --

2 MR. MUTCH: This one (indicating)?

3 CHAIRPERSON PREZEAU: Correct.

4 And then where it's referenced -- right there.

5 MR. MUTCH: Okay.

6 CHAIRPERSON PREZEAU: And that -- so there's --
7 unless I'm missing something, everybody -- so the language
8 that we talked about, the like-in-kind replacement of the
9 toggle switch --

10 So now the Chair would entertain a motion to
11 recommend to the Department the rule changes as proposed
12 to the Electrical Board on January 31, 2019, the remaining
13 rule-change proposal.

14

15 Motion

16

17 BOARD MEMBER BURKE: I make a motion to recommend --

18 CHAIRPERSON PREZEAU: The remaining rule-change
19 proposals --

20 BOARD MEMBER BURKE: -- the remaining proposals in
21 whatever way Pam needs me to do it.

22 CHAIRPERSON PREZEAU: Is there a second.

23 BOARD MEMBER JENKINS: Second.

24 CHAIRPERSON PREZEAU: So it's been moved and seconded
25 to recommend to the Department to -- to recommend to the

1 Department to adopt the remaining proposed rule changes
2 that were presented by the Department to the Electrical
3 Board on January 31, 2019.

4 Discussion on that motion? Does everybody understand
5 what we're doing? We're basically saying, Hey, with the
6 exemption of those two things we just did, everything else
7 in here looks good to move forward from our perspective
8 and we're recommending the Department do that.

9 Discussion? All those in favor, signify by saying "aye."

10 THE BOARD: Aye.

11 CHAIRPERSON PREZEAU: Opposed? Motion carries.

12 Okay.

13

14 Motion Carried

15

16 Item 7. Appeal Hearing Procedures WAC 296-46B-995

17

18 CHAIRPERSON PREZEAU: So agenda item number 7 says
19 appeal hearing procedures, which I'm going to make this
20 really, really, really, really quick, and everybody's
21 saying, No, she can't. Yes, I can.

22 So it's an update, right? So this is the work that
23 Pam and I and others who I'll mention in a minute have
24 been involved with in trying to -- and we experienced this
25 a bit today in our process in that not all of the language

1 that is in the 296-46B-995, which is the Electrical Board
2 appeal language, not all of it is -- some of it is
3 antiquated, some of the time frames. We talked about it
4 last quarter, which was in October.

5 In November/December, Pam and I and two assistant
6 attorney generals within the Spokane office met in
7 Spokane and informally discussed and walked through the
8 -- so those are assistant attorney generals. And
9 obviously, Pam's been our legal counsel since I -- since
10 before I became the Chair. And then these are assistant
11 attorney generals that have come before the Board and have
12 experienced the appeals process and are familiar with the
13 language in 995.

14 So we sat down. It was a brain-storming session.
15 And I don't know if you remember, last quarter when we
16 were here, Rod asked us when this came up, Are we going to
17 have a rule-change proposal ready to go in this rulemaking
18 process? And we said we'd try. But it's -- it's a bigger
19 undertaking than -- we don't -- we made some significant
20 headway at that discussion, identified some areas and some
21 possible solutions. But that process is ongoing.

22 ASSISTANT ATTORNEY GENERAL THOMURE: You have to
23 involve the Department and the AG's office over on this
24 side. It was the start of the process.

25 CHAIRPERSON PREZEAU: Yep.

1 Okay. Any questions about that?

2

3 Item 8. Virtual Electrical Inspection Pilot

4

5 CHAIRPERSON PREZEAU: Okay, Virtual Inspection Pilot.

6 It says if time allows.

7 SECRETARY THORNTON: No. Next time.

8 CHAIRPERSON PREZEAU: Okay. I love the spirit,
9 right? It's because we love -- and all the Board members

10 are interested in understanding in greater practice how

11 these things operate. So we'll try to do that at some

12 point in the future when the agenda allows us to

13 accommodate that.

14

15 Item 9. Public Comment(s)

16

17 CHAIRPERSON PREZEAU: Bethany, are there any more
18 signatures over there?

19 MS. RIVERA: No.

20 CHAIRPERSON PREZEAU: No? Okay.

21 So I just want to gather up the folks that signed in.

22 So let the record reflect on the appeals sign-in sheet, it

23 has Ms. Balch from the AG's office and Mr. Cannon, which

24 we addressed that.

25 And then additionally, Mr. Lees who was the counsel

1 of record in the Kirby Electric matter; he signed in on
2 the public comment, but he is not here anymore. I'm sure
3 he meant to sign in on the appeals.

4 So in order, the next person that signed in -- or the
5 first person that signed in on public comment is Tom Baker
6 from Puget Sound Electrical Training.

7 Mr. Baker.

8 MR. BAKER: Madam Chair, members of the Board, good
9 afternoon. I am Tom Baker -- T-O-M, B-A-K-E-R -- an
10 electrical instructor and master electrician from
11 Bremerton.

12 I am here for two comments. I'm no longer offering
13 electrical classes and would like to thank the Board for
14 their service. I would also like to thank L & I for their
15 support over the years.

16 I started offering electrical classes in 1995 and was
17 one of the first training providers.

18 All staff in Tumwater have been very helpful, and the
19 the class-approval process is fast and efficient.

20 My wife and I would like to especially recognize
21 Phyllis Cooper who is our go-to person when there's an
22 issue with electrical, electrician certification number.

23 The system where the providers input the training
24 rosters was of significant value to the training industry
25 and time saver for L & I.

1 In 2007 we worked with the Department to get the
2 first two training classes approved. It does not seem
3 possible that was 12 years ago.

4 Unfortunately there have been not much change in the
5 first-time pass rate.

6 My second comment concerns four important dates for
7 the Washington electrical industry.

8 As part of my instructing RCW and WAC update classes,
9 I researched the history of electrical licensing.

10 March 10, 2019, is the 100th anniversary of the
11 passing of the first electrical law for wiring in
12 Washington.

13 House Bill 260 set up contractor licensing. At that
14 time a contractor license was \$15 a year. So it would
15 seem appropriate to have some type of article in the
16 Electrical Currents and possibly some recognition from the
17 legislature or the Governor's office of this significant
18 anniversary.

19 So my classes, I discussed the history of electrical
20 licensing. Many electricians don't realize it's been 100
21 years.

22 The next significant date is March 31, 1935, which
23 was the passing of the second electrical law, House Bill
24 413 beginning permits and inspections. Note that this
25 bill was passed during the Depression, and inspector pay

1 was \$1 per hour.

2 The third date some of us remember. I've got many
3 electricians in my classes that came in the industry in
4 '74 and '75. That saw the requirement for electricians to
5 be certified. There were three laws adopted. Very
6 confusing to follow the changes. But there was
7 grandfathering; grandfathering with test, without test
8 and added the administrative requirement.

9 So the last significant date that we're all aware of
10 is July 1, 2023, where journey level electricians are
11 required to take an apprenticeship and graduate and take
12 electrical certification test. So I feel that's a very
13 significant event that will greatly benefit the industry.

14 So what's interesting is for the early days, we don't
15 have the same documentation that's available today. We
16 don't have the committee minutes, the hearing, the video
17 testimony. I have a spreadsheet I made available to the
18 electrical section a few years ago that lists all past
19 electrical legislations from 1919 to 2003. And I intend
20 to update that and forward it to the Board.

21 So perhaps L & I has some historical information to
22 file; it would be useful.

23 And also like to add that 2019 is the 56th
24 anniversary of the Electrical Board. It initially had
25 seven members.

1 Thank you for your time.

2 CHAIRPERSON PREZEAU: Wow. Well, wait. Mr. Baker,
3 before you leave, that was -- I just want to tell you how
4 much I appreciate it. We've had conversations in the
5 past.

6 I knew about the 1935 permits and inspections. I did
7 not know about -- that on March 10th, exact, right? that
8 we're going to celebrate 100 years of some level of
9 regulation in the electrical --

10 MR. BAKER: The first bill, it just required
11 licensing and bonding, but there was no requirement to
12 follow the National Electric Code. And it seems like the
13 licensing was \$15 a year. So it's interesting.

14 Somebody told me once that, you know, all the state
15 statutes are available on-line. I said, Well, that's
16 interesting. So I started digging through it, digging
17 into it, and I found all the statutes for electrical over
18 the years. And last year I went to the law library and
19 dug out the original set of House journals.

20 Again, you don't get that flavor. You don't know
21 what was going on. Why did they pass the bill? Well, it
22 was right after World War I. So obviously electrical was
23 moving along. It was felt there needed to be some
24 regulation. So ...

25 CHAIRPERSON PREZEAU: Very good. Well, thank you for

1 assembling that for us this morning.

2 And vote yes on an Electrical Currents newsletter;
3 although, that's -- you know, I don't get to proffer that.
4 But I think that is a terrific way to celebrate.

5 And thank you very much for staying with us all day
6 today to present that piece of history.

7 MR. BAKER: You're welcome.

8 CHAIRPERSON PREZEAU: It's greatly appreciated.

9 BOARD MEMBER LaMAR: Thanks for being part of it.

10 MR. BAKER: You're welcome.

11 CHAIRPERSON PREZEAU: Okay. So there's one more
12 person that has requested to make public comment. And
13 that is Justin Cox.

14 MR. COX: Madam Chair, and Members of the Board,
15 thank you.

16 CHAIRPERSON PREZEAU: And I'm just going to -- Justin
17 is J-U-S-T-I-N, and Cox C-O-X.

18 MR. COX: Yes.

19 I had an earlier discussion with the attorney general
20 regarding the issue with our property in Shelton where we
21 have a electrical panel in the bathroom. The house was
22 built in 1949. I've been discussing the matter with
23 Mr. Thornton.

24 I bring Pam into the discussion because she was
25 concerned about if this matter was ever on appeal there

1 would be a conflict.

2 But RCW 42.36.060 provides that during the pendency
3 of any quasi-judicial proceeding, no member of the
4 decision-making body may engage in ex-parte communications
5 with deponents or proponents with respect to the proposal
6 which is the subject of the proceeding unless that person
7 places on the record the substance of any written or oral
8 ex parte communications concerning the decision of action
9 and provides that a public announcement of the content of
10 the communication, and the parties' rights to rebut the
11 substance of the communication shall be made at each
12 hearing where action is considered or taken on the subject
13 to which the communication related. And it goes on.

14 It does not -- since this prohibition does not
15 preclude a member of a decision-making body from seeking
16 at a public hearing specific information or data from such
17 parties relative to the decision if both the request and
18 the results are part of the record, nor does such
19 prohibition preclude correspondence between a citizen and
20 his or her elected official. Any such correspondence is
21 made part of the record when it pertains to the subject
22 matter for quasi-judicial proceeding.

23 So to that end, we're trying to get a simple -- I
24 don't want to sound complex. We're without power in
25 Shelton.

1 The National Electric Code from what I can find
2 on-line, and like the previous public-comment speaker --
3 sounds very knowledgeable in this field -- the National
4 Electric Code did not prohibit a panel in the bathroom
5 until 1993.

6 According to Charlie Brinkmeier (phonetic), the
7 Washington -- the WAC had a prohibition which started in
8 approximately the middle of 1972. It appears to be no
9 longer in effect. And while you're dealing in your public
10 comment section -- or the rulemaking section, the
11 Department proposes to put that back into statute.

12 I'm here today because it appears that there may be
13 an unwritten rule that the Department is enforcing that's
14 not in the WAC and certainly not in the NEC. I was hoping
15 to resolve this informally, but the issue --

16 ASSISTANT ATTORNEY GENERAL THOMURE: Mr. Cox, I need
17 to ask you whether you are speaking about a pending appeal
18 or a matter that's going to be appealed with the
19 Department.

20 MR. COX: Thank you.

21 There is -- I think I'm --

22 ASSISTANT ATTORNEY GENERAL THOMURE: Because for
23 purposes of public comment, you can certainly address the
24 Board regarding your concerns. But something that is
25 under appeal that hasn't yet come to the Board, it would

1 be inappropriate to ask the Board to prejudge a situation
2 before all parties have notice and the opportunity.

3 So I just -- if you have general comments regarding
4 the statutes or the WAC's, but specifics about a matter
5 that would be -- that is potentially under appeal -- I
6 don't know what that is -- it would be inappropriate in
7 terms of public comment to this body.

8 MR. COX: I hear you. But there is no -- the statute
9 just simply says during the pendency of any quasi-judicial
10 proceeding. There is no appeal pending at this time.

11 We are without power in Shelton, Washington.

12 ASSISTANT ATTORNEY GENERAL THOMURE: The statute you
13 quoted is not applicable. But go ahead.

14 MR. COX: There is no appeal pending at this time.

15 We are without power in Shelton, Washington.

16 As the prior appellant had the issue, you can see
17 the time frame it takes to bring something before this
18 Board.

19 So in that respect, there should be a method by which
20 -- if we are denied by the Director to get a notice of the
21 right to appeal. So in the public-comment sense it would
22 be helpful I think to make sure that if there is a denial
23 that we have the right to appeal so there's not the
24 confusion that we see in other proceedings.

25 Then we go to the subject of, Okay, if someone cannot

1 re-energize their home which is in compliance with the
2 statute at the time that it was built, in 1949, and the
3 NEC specifically allows for a installation that was in
4 compliance at the time to remain.

5 As public comment, I would hope the Board would put
6 on the next agenda a matter for some type of expedited
7 review procedure. Maybe the Board can meet ex parte.
8 But if someone was without power and cannot get it
9 re-energized on an installation that was already
10 previously approved, that to me means almost a public
11 safety issue because we cannot get a re-energization with
12 any reasonable amount of time.

13 And I don't think it's -- with all due respect to the
14 Board, it's not reasonable to have to wait for a quarter
15 to get power re-energized to an installation.

16 And it's not so much the Department's fault in the
17 sense that if you have Puget Sound Energy, they're not
18 going to require you to go through procedures. They will
19 re-energize. It's certain districts will require you to
20 obtain approval from the Board, or essentially they'll
21 obtain approval from the Department which is overseen by
22 the Board. And having to wait a full quarter to get your
23 house re-energized is unreasonable in my opinion.

24 So I understand that you have very limited amounts
25 that the Board can do during public comment. And that's

1 the structure that is here today. But I want to bring to
2 the attention in public comment the situation regarding
3 inspectors. And we heard some confusion regarding the
4 person who left 15 days after and what was represented to
5 him.

6 I think it's important that there be clarity,
7 especially for contractors and for homeowners that there's
8 clarity within the Department as to what information is
9 given out and to make sure that it's consistent and that
10 the -- the goal is for the inspectors to work with the
11 homeowner and with the contractor to make our lives easier
12 but to be within accordance within the law.

13 So I have made over 20 calls to various L & I
14 departments trying to be reasonable and trying to get a
15 resolution to this situation. I've been told that all
16 systems must be up to current code to be re-energized. To
17 me, that's an overreach. The NEC does not allow that. So
18 if other people are experiencing that same problem, I
19 think it's important that the NEC does allow -- and it's
20 very specific about existing installations.

21 I was told that there is an unwritten blanket policy
22 within L & I that prohibits the turn-on of any previously
23 vacant unit with our same panel situation. I've been told
24 that it's impermissible that there was a vanity under the
25 panel box. There is not a vanity under our panel box.

1 I've been told that panels weren't never allowed in a
2 bathroom at any time. And that's not true.

3 One brave individual, which I'm fearful for
4 specifying his name because I don't want it to be any
5 retribution. And I wouldn't -- the name of this person is
6 Stephen; he seems like a very good gentleman. But once
7 the Department has already said, like this prior appeal,
8 that it's fine, you can go ahead and get it done; we've
9 looked at it, and we've evaluated it, and then we take a
10 course of action in reliance on that decision, and then to
11 get it internally reversed is very frustrating. And I
12 think that's a similar thing that what happened before.

13 I think that it's important that within L & I this
14 Board has a duty to make sure that the public is served,
15 contractors are served, the industry is served, but making
16 it as clear as possible and as friendly as possible, and
17 all while acting within the both the spirit and the letter
18 of the law.

19 My father's a senior citizen. His health would not
20 allow him to come here today. But I think shutting off
21 the power is a real issue. It's like sometimes we have
22 issues that we perceive are problems, and then they create
23 other issues such as issues with displaced persons going
24 into homes, vandalism and other issues that having power
25 off creates.

1 So I understand that I think I have the right to,
2 according to the statute, to distribute material to the
3 Board members to look at. I don't think it's -- I think
4 it's a first-amendment right, and I think it's a statutory
5 right to pass out information in accordance with public
6 comment to advise the Board about what a member of the
7 public has been experiencing within the Department.

8 And if the attorney general's going to take the
9 position that I can't pass out information on public
10 comment, I don't think that's right. So I'd like a ruling
11 from the Board, either "yes" or "no," whether they are
12 willing to accept my public comment material that I would
13 like to present.

14 CHAIRPERSON PREZEAU: So Mr. Cox and Pam and I had a
15 conversation off the record regarding Mr. Cox's desire to
16 engage the Board under public comment. And we have always
17 been incredibly consistent, right? because the Open Public
18 Meetings Act and certainly, you know, 19.28.311 is the
19 Electrical Board reference in the statute. And then 19 --
20 or in 296-46B-995, it has additional language about
21 conduct of the Electrical Board and appeals, and you've
22 heard me read from that earlier with matters in front of
23 the Board. And our conversation with Mr. Cox, we were
24 consistent with what we had -- and many of the Board
25 members have seen similar scenarios to this happen

1 previously or historically where somebody has a -- has --
2 an individual, whether it is a contractor, whether it is
3 an electrician, whether it is a stakeholder of any form
4 wants to engage the Electrical Board during public
5 comment, and it is possible that that subject matter that
6 that person wants to engage the Board with could end up
7 here as a formal appeal, right? Because we -- right?

8 We looked at the appeal language. The Department
9 takes an action that the person -- the impacted party has
10 the ability to appeal that decision as we've seen multiple
11 times today. And so it would be not only a poor practice,
12 but the statutes that govern the Open Public Meetings Act,
13 the statutes that govern our operations here puts some
14 prohibitions on people's first-amendment rights with
15 respect to public comment. And the reason for that is
16 because it would be improper for somebody who -- if any
17 entity including the Department wanted to engage the
18 Electrical Board under the agenda item of public comment,
19 and it would be possible that that subject matter -- that
20 specific subject matter could come on appeal to this
21 Board. Because the reason the appeal language is in here
22 is to give both parties notice, to give both parties due
23 process, to provide evidence and briefing that goes in
24 accordance with a fair and objective appeal process.

25 And so Mr. Cox's arguments about -- or his position

1 about it's his first-amendment right to distribute the
2 materials that are specific to this installation or this
3 building in question in Shelton, it is our -- the advice
4 of our attorney -- and I won't ever put words in her mouth
5 -- but it is the advice of our assistant attorney general
6 that that would be -- if we allow -- if we the Board
7 members looked at that material, we would be in violation
8 of the Open Public Meetings Act. We would be in violation
9 of our own rules and statute.

10 MR. COX: And I'd like to make a comment about --

11 ASSISTANT ATTORNEY GENERAL THOMURE: Let me -- let me
12 follow up with that for the Board members.

13 This is -- for the reasons that Tracey's articulated,
14 if you look at WAC 296-46B-995, subsection (9) -- I have
15 not seen what Mr. Cox is proposing, but subsection (9)
16 requires that all filings and documents for any matter
17 before the Board must be submitted to the chief electrical
18 inspector before the Board meeting. It says no later than
19 45 days prior to the scheduled meeting.

20 One of the reasons for that rule as to give the
21 Department an opportunity to have input in terms of
22 whether information is appropriate in a public comment or
23 whether it pertains to an appeal.

24 So I think in addition to -- the concern is that
25 Mr. Cox has not given the Department that opportunity to

1 weigh in on whether this relates to an appeal or not.

2 And we have a provision in the rule that technically has
3 been violated.

4 MR. COX: Well, I would like to make a comment.

5 You're in proposed rulemaking to actually prohibit this
6 situation. So I think as a reasonable accommodation the
7 Board must under the Open Meetings Act receive public
8 comment.

9 And my father is not well with his health condition.
10 There is a letter from him that should be entered into
11 the record on public comment, especially in light of
12 trying to propose rules to ban the very installation that
13 is presently not in the Washington Administrative Code.
14 So ...

15 CHAIRPERSON PREZEAU: So let me just address that
16 subject head on.

17 So what I believe you are referencing is in the rule
18 proposals, right? So you have the statute and then you
19 have the administrative code, under 296-46B-230,
20 subsection 070, that refers to service equipment and
21 disconnecting means. This proposal is not to -- is to --
22 Rod, I'm making sure that -- is to move this existing
23 language that right now in the Washington Administrative
24 Code prohibits panels being located in bathrooms, which
25 is existing in rule. All it's doing is moving that to a

1 different numerical section of the rule?

2 MR. MUTCH: Yes.

3 CHAIRPERSON PREZEAU: So the Board through its
4 actions today did not -- didn't change this language,
5 didn't alter this -- this language exists prohibiting
6 panels in bathrooms. All we're doing -- all they did was
7 move that language to a different spot in the Washington
8 Administrative Code.

9 MR. COX: It's very difficult I think to -- I can
10 appreciate you all have access to this document. And when
11 we're supposed to be making public comment regarding this,
12 we don't -- I don't have access to what you're looking.
13 So --

14 CHAIRPERSON PREZEAU: So the other thing that I would
15 -- I'll just address that issue too, sir, is at the
16 beginning of that agenda item when we went through the
17 rulemaking, I made an announcement, which was the reason
18 we were going to hold public comment regarding the
19 rulemaking process to the last agenda item number 9 was
20 because in the statute and in -- in the electrical statute
21 and in the electrical rules, the electrical -- the
22 Department has a requirement to sit in front of this Board
23 and present any rule -- change -- proposed rule changes,
24 and we get the opportunity to make a recommendation. And
25 it -- and we'll always provide opportunities for public

1 comment. However, there are scheduled meetings all around
2 the state of Washington for the sole purpose of
3 individuals like yourself or any stakeholder to make
4 public comment directly to the Department regarding any
5 of the rule changes or lack thereof. These are also
6 posted on and have been posted on the Washington State
7 Department of Labor and Industries electrical program Web
8 site. They're downloadable. They're printable. But we
9 have no statutory requirement or any administrative code
10 requirement to provide paper copies to anybody that
11 attends the Board meeting. We have a requirement to make
12 sure that the Board members have access to this -- for
13 them to fulfill their role as Board members.

14 And one thing I would like to offer just for your --
15 just for contextual purposes, all of these Board members
16 that you see in here, we're volunteering today.

17 MR. COX: I appreciate that.

18 But you have a large responsibility like when you're
19 -- when we're dealing with situations on variances. You
20 have the discretion to issue or not to issue a variance.
21 You're a very powerful board. And you make -- you control
22 what electrical installations are approved in Washington
23 state, which is a huge responsibility.

24 And I thank you for all your service; I do.

25 I think, though, it is inappropriate even if you're

1 moving it -- okay, here's -- going back for a second. I
2 don't want to take your time. I know we all want to get
3 moving. But you -- there is a statute that's referenced.
4 I have not been provided this statute at all. I've --
5 we've requested it in writing. So I understand you have
6 it. But we've requested it. I couldn't get access to
7 what was there initially.

8 So whether they're deleting it, whether they're
9 moving it, changing it, there's a written public comment
10 request to that issue. And I think that I'd like a formal
11 ruling on whether or not you're going to take a public
12 comment on the rulemaking issue. Because it should be
13 documented in the record if you're going to move it and
14 any change. Even if you're renumbering it. We have a
15 right to put our public comment in the record regarding
16 that. And if the Board --

17 CHAIRPERSON PREZEAU: Yeah, and I don't have any -- I
18 agree with you, right? I agree with you.

19 The only -- the push-back that I was offering is,
20 you know, if you want to make public comment about any of
21 the proposed rule changes that were presented to the
22 Board today, we welcome -- that's fine. We'll welcome
23 that. But we're not -- what we're prohibited in doing is
24 listening to the specific situation regarding the
25 Department's possible decision, it's having a negative

1 impact on your family. We can't listen -- this Board
2 cannot hear the specifics of that situation because it is
3 possible that that issue comes before this Board in a
4 official appeal process, and we can't circumvent that
5 process.

6 MR. COX: But there is no appeal pending. And there
7 is no -- we don't know whether we're going to appeal or
8 not. I've not heard the attorney general make any
9 statutory reference that it is prohibited that this be
10 discussed with the Board. There's -- I've -- this
11 statute here says that it is permitted.

12 So I understand the concern. But if you're -- if
13 this Board is going to take an official action throughout
14 this meeting and a number of official actions, the meeting
15 itself has to receive in public comment or else the
16 meeting is theoretically invalid.

17 ASSISTANT ATTORNEY GENERAL THOMURE: So I think
18 things are getting a little off track here. Your -- if I
19 could clarify for the Board members, there is -- you made
20 certain statements that, as I wrote down, that you're
21 asking that the Board -- that you want a way to have the
22 matter heard outside -- not have to wait for quarterly
23 meetings, that you want clarity from the Department about
24 the information that's given out to homeowners, and you
25 want the Board to make it clear in terms of what that

1 clarity should be.

2 The conversation then went into you wanted to pass
3 out a piece of paper which is separate from the
4 rulemaking. You're now talking about proposed rulemaking.

5 So you -- I think that you need to clarify your
6 request in terms of is the paper that you have, is that
7 relating to the proposed rule changes or is that relating
8 to the specifics of your situation that you talked about
9 earlier?

10 MR. COX: I will clarify.

11 The -- you've heard the issues regarding public
12 comment, and I understand you want them broken down.
13 Separately and independent of the situation that is being
14 experienced with the Department at the moment, the
15 rulemaking when there's a change, I'd like to put a public
16 comment in regarding that.

17 Before changes are made because there's so much
18 confusion within the Department and within the customers
19 and electricians and contractors and maybe even the
20 industry as to which rules apply, it -- I would like to
21 make a public comment that the Board should carry over to
22 the next agenda a recommendation to the Department that it
23 clarify the rules that, in fact, the NEC does apply and
24 any existing installations that were to code at the time,
25 that that be recommended to be inserted while you're doing

1 your rulemaking and into -- in that light, public comment,
2 this document is highly relevant because it outlines the
3 code history from a highly respected home inspector who
4 took the time, like the gentleman's prior comment, to go
5 back and look at the history of the codes. It talks about
6 problems that can arise when those kind of issues occur
7 when there is confusion.

8 So there are certain items that could be dual
9 purpose. And this one should specifically -- this should
10 be entered into the record as to rulemaking and why
11 rulemaking is very important, that it be clear to the
12 issues so these confusions don't happen.

13 ASSISTANT ATTORNEY GENERAL THOMURE: So I'm going to
14 make a recommendation to the Board members that the -- if
15 it has to do with rulemaking, that it should be submitted
16 through the rulemaking process at the stakeholder meetings
17 and the public hearings so that the Department can
18 consider Mr. Cox's request.

19 The other matter is that it -- I did outline for the
20 Board, at least procedural rule, and Mr. Cox is still
21 requesting that, I think that is appropriate for the Board
22 to make a decision of whether or not the Board thinks it
23 should accept any papers from Mr. Cox at this point. I've
24 given you my legal advice. But that's --

25 MR. COX: And I would argue that I would urge the

1 Board to make a decision to accept the documents,
2 especially on the rulemaking decision. Because it is a
3 duty of the Board to both hear oral comments and also to
4 offer accommodation to someone who can't attend who would
5 like to submit written comment.

6 CHAIRPERSON PREZEAU: Hearing that, right? is there
7 interest from the Board --

8 BOARD MEMBER LaMAR: I have a concern because that --
9 I sympathize with you that your father isn't here.
10 However, I have no way of knowing that this is your
11 father's words. I mean, how would I know it's not hearsay
12 or conjecture. That's what concerns me ... out of
13 fairness to your father as well.

14 MR. COX: He did e-mail his concerns to the
15 electrical program. And so it's been e-mailed to the
16 Department. So, you know, I think you have to take it for
17 what it is. If you want to help hold another Board
18 meeting to inquire as to whether or not these are his
19 words, that's fine.

20 But I think that the Board has a duty under Open
21 Records (sic), it's not a valid meeting unless you hear
22 all the comments.

23 And we've been going through so many issues regarding
24 the rules that are presently in place, that it's very
25 important that these be clarified. Because people -- when

1 you get so many different answers on the same topic,
2 that's what rules are for ... to clarify those.

3 CHAIRPERSON PREZEAU: Yeah, I would agree with you,
4 Mr. Cox.

5 I just wanted to --

6 Steve, do you have in front of you or can we make
7 readily available to Mr. Cox and to the Board members what
8 is the schedule of public comments meetings going -- from
9 this day going forward regarding rulemaking -- the present
10 rulemaking?

11 SECRETARY THORNTON: Yeah, I mean, I -- I'm in
12 Vancouver next week, then I skip a week, and then I'm in
13 Tacoma, Bremerton, Bellevue or Port Angeles. So I work my
14 way north to south and then east of the mountains from now
15 through May.

16 CHAIRPERSON PREZEAU: So the method to my madness
17 here, Mr. Cox, is making sure that you have -- you are
18 made aware of what the schedule is of the public comment
19 and the stakeholder comment meetings that the Department
20 has scheduled both dates and locations throughout the
21 state of Washington. Because we're not going to --
22 certainly -- you know, I think I was pretty clear if
23 anybody wanted to comment on the rules, we weren't going
24 to do them when we were talking about them, but they could
25 do them under public comment. Not -- never -- we strive

1 not to prohibit public comment unless it is in a situation
2 where it potentially prejudices the Board given matter
3 that could possibly be on appeal.

4 So if you want to enter any comments, if you want to
5 direct us to have a conversation about -- or if you want
6 to weigh in on -- add additional comments about your
7 opinions on the rulemaking, you know, we will entertain
8 that.

9 What Pam has -- you know, and certainly make sure
10 you know that we are not the last authority with respect
11 to this rulemaking process. We are one step in a
12 multi-step process, right?

13 MR. COX: So could --

14 CHAIRPERSON PREZEAU: And I also ask the Board -- and
15 before -- if you give me a moment.

16 And Board Member, you know, Ryan commented -- Chair
17 will entertain a motion if somebody wants to -- if you
18 want to take action to accept the documents from Mr. Cox
19 in conflict with advice from our assistant attorney
20 general, the Chair would entertain that motion.

21

22 Motion

23

24 BOARD MEMBER JENKINS: I make a motion that we do not
25 accept documentation at this time.

1 BOARD MEMBER NORD: I second that motion.

2 CHAIRPERSON PREZEAU: So it's been moved and seconded
3 for the Electrical Board not to receive the document from
4 Mr. Cox.

5 Discussion on the motion?

6 BOARD MEMBER BURKE: I want Mr. Cox to understand
7 that's also for the protection of him.

8 CHAIRPERSON PREZEAU: Yep.

9 BOARD MEMBER BURKE: Not -- it doesn't sway either
10 way. I feel like we could -- it would possibly be us
11 doing a disservice, let alone the laws behind it, but
12 doing a disservice to you if we were to ever see an
13 appeal. So I don't want you to think that it's, you know,
14 a one-sided thing. It's definitely for us to do our job
15 to the best of our abilities as a Board. I agree. But I
16 just wanted to add that comment.

17 CHAIRPERSON PREZEAU: Okay. Any other discussion on
18 the motion?

19 SECRETARY THORNTON: Just one comment. All the
20 information that you're asking for is on our Web site
21 including the rules on how to submit an official request
22 for a rule change. And the Currents newsletters are all
23 listed there. The August of 2018 is the one that has all
24 the dates and locations of the stakeholder meetings.

25 CHAIRPERSON PREZEAU: So --

1 ASSISTANT ATTORNEY GENERAL THOMURE: Wait, wait,
2 wait. The Board has to vote on the motion.

3 CHAIRPERSON PREZEAU: Any other discussion from Board
4 members on the motion? Seeing none, all those in favor,
5 signify by saying "aye."

6 THE BOARD: Aye.

7 CHAIRPERSON PREZEAU: Opposed?

8

9 Motion Carried

10

11 CHAIRPERSON PREZEAU: Mr. Cox, we're not going to
12 accept your documentation this afternoon.

13 MR. COX: In closing, I would ask the Board to
14 possibly -- so the next agenda item to add a agenda item
15 to make it -- make a recommendation to the -- in the
16 rulemaking process to discuss -- to ensure that any
17 installation that was permitted per the code is allowed
18 subject to the safety exceptions that are there. I think
19 that it's important to put something on the next agenda
20 that clarifies what is and what is not allowed so these
21 kind of situations don't occur again.

22 CHAIRPERSON PREZEAU: Thank you, Mr. Cox.

23 Okay. So that is everybody that has officially
24 requested to address the Board under public comment.

25 Certainly if there's anybody left in attendance that

1 wanted to address the Board under public comment, we would
2 make accommodations for that now.

3 Going once. Going twice. Going three times. Okay.
4 So seeing that nobody else wants to engage the Board under
5 public comment ...

6 So before the Chair would entertain a motion to
7 adjourn, one more thing. And that is -- so we introduced
8 new Board member, Erick Lee, right? who replaces Janet
9 Lewis in that electrician seat. So I just wanted to make
10 sure it gets in the record thanking Janet Lewis for her
11 years of service to the electrical construction industry
12 and to this Board specifically representing electricians.

13 I also wanted to call in the record that Randy Scott
14 who continues actually to occupy the public member seat, I
15 don't know if you guy knew this, but he has been retired
16 for the last close to two years, and he kept coming to the
17 Board meetings out of the dedication or a commitment that
18 he made to that gubernatorial appointment and -- but he
19 told me "No more," and he's in an R.V. with his wife down
20 in Southern California. So he's -- right? But I wanted
21 to get into the record his years of dedication and service
22 as well.

23 And then also, Kevin Schmidt likely to be your --
24 you're currently occupying telecommunications contractor
25 seat. Kevin and his wife have made some -- looks like

1 they're moving to Ohio if I remember right. This is
2 highly likely that this will be Kevin's last Electrical
3 Board meeting and while he's here wanted to make sure we
4 get it in the record and thank Kevin for his dedication
5 not only to the broader electrical industry, but
6 specifically his dedication to being an Electrical Board
7 member. Thank you very much.

8 Any parting comments you want to say?

9 BOARD MEMBER SCHMIDT: Thanks. It's been great.

10 CHAIRPERSON PREZEAU: So unless there's anything that
11 I'm missing, the Chair would entertain a motion to adjourn
12 the January 31, 2019, Electrical Board meeting.

13

14 Motion to Adjourn

15

16 BOARD MEMBER JENKINS: So moved.

17 BOARD MEMBER NORD: Second.

18 CHAIRPERSON PREZEAU: Moved and seconded to adjourn.

19 Any discussion on the motion? All those in favor signify
20 by saying "aye."

21 THE BOARD: Aye.

22 CHAIRPERSON PREZEAU: Opposed? Motion carried.

23

24 Motion Carried

25

