

1 DEPARTMENT OF LABOR AND INDUSTRIES

2 STATE OF WASHINGTON

3
4 _____
5
6 ELECTRICAL BOARD MEETING

7
8 TRANSCRIPT OF PROCEEDINGS

9
10 Thursday, July 31, 2014
11 _____

12
13 BE IT REMEMBERED, that an Electrical Board meeting
14 was held at 9:00 a.m. on Thursday, July 31, 2014, at the
15 address of the Department of Labor & Industries, 7273
16 Linderson Way SW, Tumwater, Washington, before CHAIRPERSON
17 TRACY PREZEAU, BOARD MEMBERS ALICE PHILLIPS (Vice Chair),
18 JOHN BRICKEY, JANET LEWIS, DAVID CORNWALL, MIKE NORD,
19 DYLAN CUNNINGHAM, DENNIS TOWNSEND, and INTERIM
20 SECRETARY/CHIEF ELECTRICAL INSPECTOR LARRY VANCE. Also
21 present was ASSISTANT ATTORNEY GENERAL PAM REULAND
22 representing the Board.

23 WHEREUPON, the following proceedings were held, to
24 wit:

25
26 Reported by:
27 H. Milton Vance, CCR, CSR
28 (License #2219)

29 EXCEL COURT REPORTING
30 16022-17th Avenue Court East
31 Tacoma, WA 98445-3310
32 (253) 536-5824

Thursday, July 31, 2014
Tumwater, Washington

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Thursday, July 31, 2014
Tumwater, Washington

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CHAIRPERSON PREZEAU: All right. Good morning. It is 9:05, and I would like to call the July 31, 2014, Electrical Board meeting to order. Good morning, everyone.

THE BOARD: Good morning.

CHAIRPERSON PREZEAU: It's nice to see eight of our Board members here this morning, which means that we have a quorum, and we will be able to hear all the business today. It was a little bit touch and go. So I'm very happy to see all of you. Thank you.

Item 1. Approve Transcripts from April 24, 2014,
Electrical Board Meeting

CHAIRPERSON PREZEAU: The Chair would like to entertain a motion to approve the transcripts of the April 24, 2014, Electrical Board meeting.

Motion

BOARD MEMBER NORD: Motion.

BOARD MEMBER PHILLIPS: Second.

CHAIRPERSON PREZEAU: Motion and second to approve

1 the minutes. All those in favor signify by saying "aye."

2 THE BOARD: Aye.

3 CHAIRPERSON PREZEAU: Opposed? Motion carried.

4

5 Motion Carried

6

7 CHAIRPERSON PREZEAU: Thank you.

8

9 Item 2. Departmental/Legislative Update

10

11 CHAIRPERSON PREZEAU: So do we -- I don't see Jose'.
12 Is Jose' planning on being here? Or are you giving the
13 Department update?

14 SECRETARY VANCE: I will give the Department update.

15 CHAIRPERSON PREZEAU: Very good.

16 SECRETARY VANCE: Madam Chair, member of the Board,
17 my name is Larry Vance. I'm the Interim Chief Electrical
18 Inspector and Acting Secretary to the Board.

19 CHAIRPERSON PREZEAU: You're probably going to have
20 to speak up a little bit so the peanut gallery can hear
21 you.

22 SECRETARY VANCE: We have no legislative matters.

23 As far as the budget's concerned, we're, of course,
24 closely monitoring the budget. The current balance of the
25 electrical fund is \$9,596,547. And although that might

1 seem inflated, if you look at the graphic on the screen,
2 you can see that there's going to be \$1.7 million removed
3 from the fund --

4 CHAIRPERSON PREZEAU: This month.

5 SECRETARY VANCE: -- this month. Yes, this July.

6 If you look at our revenue, which is line 6 right
7 here, this is projected revenue. And it's essentially an
8 average of the last 12 months.

9 And if you look at June revenue right here, you can
10 see that we had a spike in revenue -- a significant spike
11 in revenue.

12 CHAIRPERSON PREZEAU: Is that 2.54?

13 SECRETARY VANCE: That is 2.64, yeah.

14 CHAIRPERSON PREZEAU: That's big.

15 SECRETARY VANCE: So what -- we've kind of looked
16 into that. What that's a result of is a code change.
17 Residential contractors bought -- got their -- got
18 organized and bought permits prior to the code change.
19 And that would allow them to have their jobs inspected to
20 the previous AFCI rules. So we're finding -- we found
21 significant numbers of residential permits bought in the
22 latter part of June.

23 We also have some larger projects in Eastern
24 Washington.

25 Looking at the July numbers, which aren't final yet,

1 we're looking at a below average permit sales for the
2 month of July.

3 So it looks like the industry decided to take
4 advantage of the AFCI rules while they could. So it will
5 be interesting to see how far out they bought permits for.
6 Permits are only good for a year, so ...

7 CHAIRPERSON PREZEAU: Well, if they were smart enough
8 to come together to do that, I'm sure they're smart enough
9 to understand that permits are only good for a year.

10 SECRETARY VANCE: I think so. I think so.

11 CHAIRPERSON PREZEAU: That's fascinating.

12 SECRETARY VANCE: It is fascinating that there'd be
13 that much -- it's essentially \$800,000 above normal. So
14 it's a significant spike.

15 Looking down here on the graph, you can see -- that's
16 what it looks like, yeah.

17 CHAIRPERSON PREZEAU: So -- and Larry, do you know
18 what the cost -- can you off the top of your head, what
19 they're saving and buying those before the new arc fault
20 rules come into play?

21 SECRETARY VANCE: It really gets down to the
22 ingenuity of the installer and how they're going to
23 circuit the house. There's going to be more AFCI devices
24 required in breakers, for instance, in the panelboard.

25 But we are finding a few folks that despite all of

1 our efforts to provide outreach and education on the new
2 code, we are finding folks that haven't wired to meet the
3 new code, and when you run multi-wire branch circuits that
4 aren't compatible with AFCI devices, then there's some
5 rework to do. It's not a significant number of people out
6 there. But the ones that do get caught with that aren't
7 happy at this point. But it's probably time that everyone
8 is taking a 2014 NEC code update. And some just haven't
9 gotten there.

10 Something that this also does, this is essentially
11 something that our budget department gives us. And former
12 Chief Electrical Inspector Rod Mutch worked on this a
13 little bit, put a little functionality in there, made a
14 calculator out of it.

15 We had a supplemental budget request approved, and it
16 allowed us to -- it increased our allotment to add more
17 inspectors.

18 And as you can see here in line 8, we're deficit
19 spending out of the fund at our current level of staffing.
20 And what that does is it puts us at 4.5 months at the end
21 of the biennium. 4.5 months of operating capital.

22 The office of financial management, they think that
23 two months to three months is a good number to have.

24 And if we look back at this 1.7 million that's coming
25 out, and this 1.7 million that's coming out, that's \$3.4

1 million. If we're sitting there with \$4.5 million, we
2 could be subject to that same exercise by the legislature.

3 These are monies that have been paid for by
4 electrical contractors and electricians. At this point,
5 we're -- there is some concern, though, because if we add
6 -- according to the supplemental budget that was approved
7 when they increased our allotment, we can add up to seven
8 inspectors. And what that puts us down to is 3.8 months
9 of operating capital. And we're deficit spending at
10 \$104,000 a month on the fund. So in eight months, we're
11 below three months operating capital.

12 The cushion that we have is we have temporary
13 electrical inspectors. And this is with zero revenue
14 growth. Zero revenue growth.

15 CHAIRPERSON PREZEAU: Yeah. I was going to say this
16 makes some pretty conservative assumptions.

17 SECRETARY VANCE: This is very conservative at this
18 point.

19 So with zero revenue growth and seven inspectors,
20 that puts us down to, of course, 3.8 months of operating
21 capital.

22 If we were to lay off the temporary electrical
23 inspectors -- and that would not be the spy group; that
24 would be -- there's 11 temporary electrical inspectors --
25 then this 104,000 actually essentially becomes zero. So

1 we're sitting there at 3.8.

2 So we're kind of in a situation where do we move
3 forward? Do we not forward? And in the past, the Board
4 has felt an adequate cushion was six months of operating
5 capital. And OFM looks at six months of operating capital
6 as three months too many. So we're kind of -- the
7 Department's looking for a little guidance from the Board
8 as to what in these economic times you're comfortable
9 with.

10 CHAIRPERSON PREZEAU: So I'm certainly more than
11 happy to weigh in on this.

12 What's interesting is when the Board made that -- set
13 the bar of six months, it was a little bit of a different
14 time period and a different economy. And I share that
15 because I was here when that happened. And we had I think
16 at the time somewhere about 9 million bucks, 12 million
17 bucks in the fund. And so it was -- we had sort of this
18 luxury of being able to say, well, you know, six months of
19 operating capital in reserve seems to be a good idea
20 because we had a lot of money. And we were doing good
21 things. That's the tenure when the former chief -- we
22 actually didn't increase; we actually reduced costs of
23 permits for -- tried to return it back to the industry.
24 We froze costs of certificate renewal and license renewals
25 and tried to be responsible with it. But -- you know.

1 And then the construction depression that hit in 2008
2 sort of changed our lenses really, you know. At one
3 point, we were -- I think the lowest we got -- as we
4 navigated that from 2008 -- late 2008 to present day, the
5 lowest our fund reserve got was -- I mean, I don't look at
6 it every day like Larry does, but I recall -- I think the
7 lowest it got was \$4.1 million.

8 And I think -- I don't know about the rest of the
9 Board. We did write a letter to the Governor, the Senate
10 majority leader, and the Speaker of the House that we
11 propose that there should be a \$3.4 million. And we
12 looked at it as basically a tax on contractors. And it
13 was. But I don't -- my perspective and, you know,
14 certainly Larry's looking for guidance from the entire
15 Board, my perspective is if we can -- we have -- I think
16 the interim chief and the electrical program have got
17 this dialed in so well in terms of, you know, looking at
18 revenue, looking at expenditures, balancing temporary
19 staff and permanent staff and -- I would prefer that we
20 run a little bit closer to three and a half, four month
21 operating reserve and stay under the radar of another
22 financial sweep. That's my perspective.

23 I feel comfortable knowing that we have tools
24 available to -- I think this is a very conservative
25 estimate, again, because we're feeling no additional

1 increase in revenue.

2 How many times do you look at this in a week, Larry?

3 How many times do you watch the financials in a week?

4 SECRETARY VANCE: Well, we're always anticipating
5 different reports throughout the month.

6 CHAIRPERSON PREZEAU: So I mean, it's something you
7 are constantly looking at?

8 SECRETARY VANCE: It's something we're constantly
9 looking at, yes.

10 CHAIRPERSON PREZEAU: Any other thoughts? Alice?

11 BOARD MEMBER PHILLIPS: Do you know what the standard
12 accounting practice is for reserves? It's it three
13 months?

14 SECRETARY VANCE: Two to three.

15 BOARD MEMBER PHILLIPS: Two to three?

16 SECRETARY VANCE: Which is -- as Tracy said, back
17 during the recession, we didn't know if we were going to
18 get more good news or more bad news. And what it was was
19 just more bad news.

20 It took 69 months to recover the jobs lost during the
21 last recession. It was 69 months long. And I think that
22 looking at permit sales, they continue to climb upward.
23 The residential market's starting to move a little bit, at
24 least have some -- it's starting to have some momentum
25 that it didn't have before.

1 So -- I can't look into a crystal ball. This kind of
2 helps us look at a crystal ball.

3 But if we just had a number here, for instance, if we
4 could say that this was seven percent positive growth,
5 then all of a sudden, life's good. Now we're at 4.6
6 million in the fund. Things are great. If it's 3
7 percent, it's still not too bad. But time will tell what
8 that number is. And right now we don't have enough -- we
9 don't have enough data to say that this is where the
10 number is.

11 But yet we get to a situation where really what I
12 need to do is if we were to hire seven today, those seven
13 wouldn't be on today. We'd be fortunate that they'd be on
14 in seven months -- or excuse me -- two months. So if you
15 back two months of the seven out, then the numbers change
16 also.

17 We've got a continuous floating vacancy rate within
18 the inspectors' ranks. The cessation planning inspectors
19 fill that void, but we're on our third class of cessation
20 planning inspectors, and it's hard to keep that pool
21 filled.

22 CHAIRPERSON PREZEAU: Yeah, I mean, that's the other
23 concern, right? is the -- what percentage of your program
24 team is eligible to retire in the next five years, you
25 know.

1 SECRETARY VANCE: Yes.

2 CHAIRPERSON PREZEAU: So keeping -- being mindful of
3 all of these variables, we certainly -- if all of them --
4 if all the, you know, field staff are off the electrical
5 program team, if everybody that was eligible to retire
6 decided to retire, we would probably be in trouble,
7 right?

8 SECRETARY VANCE: Yes.

9 CHAIRPERSON PREZEAU: And which has an impact on
10 contractors and customers and work being performed and
11 inspection rates being performed successfully within the
12 48-hour threshold. And, you know, we have a statutory
13 requirement to provide that.

14 SECRETARY VANCE: Exactly.

15 CHAIRPERSON PREZEAU: So, you know, it's ...

16 SECRETARY VANCE: So I've been talking about the
17 group. And the group's actually in here. We have the
18 whole class of cessation planning inspectors and some
19 other inspectors that are in the room today.

20 CHAIRPERSON PREZEAU: I know. I guess I was somewhat
21 remiss in that we didn't do introductions this morning.

22 And so this class of inspectors that are here joining
23 us, Faith told me that they were going to be here this
24 morning. And I think that that's fantastic. And there is
25 a special person in that group. I must -- I'd be remiss

1 if I did not identify -- his name is Jim Simmons, and he's
2 a former Electrical Board member and former vice chair of
3 the Electrical Board. And so it's great to see you here
4 as well as the rest of the class.

5 So to that -- for the benefit of the rest of the
6 peanut gallery along with the inspectors, I would ask that
7 we -- everyone at the table, beginning with Elyssa do
8 introductions, please.

9 MS. ZYSKI: I'm Elyssa Zyski, and I'm assistant to
10 the Secretary of the Board.

11 SECRETARY VANCE: I'm Larry Vance. I'm the Interim
12 Chief Electrical Inspector, and I guess I would be the
13 Interim Secretary to the Board.

14 CHAIRPERSON PREZEAU: Milton, come on.

15 THE COURT REPORTER: I'm the court reporter.

16 BOARD MEMBER BRICKEY: I'm John Brickey, director of
17 community development for the City of Longview and
18 building official for City of Longview, and I represent
19 city jurisdictions on the Board.

20 BOARD MEMBER LEWIS: Janet Lewis with IBEW. I'm
21 representing the electrician seat.

22 BOARD MEMBER CORNWALL: Dave Cornwall, Platt Electric
23 Supply, the manufacturers seat.

24 BOARD MEMBER PHILLIPS: Alice Phillips, IBEW 43,
25 outside line workers.

1 CHAIRPERSON PREZEAU: Tracy Prezeau also with the
2 IBEW, and I represent -- I sit in the electrician seat and
3 am the Chair of the Board.

4 ASSISTANT ATTORNEY GENERAL REULAND: Pam Reuland from
5 the Attorney General's office. I am the attorney advisor
6 to the Board.

7 BOARD MEMBER NORD: Mike Nord, communication workers
8 union.

9 BOARD MEMBER CUNNINGHAM: Dylan Cunningham. MW
10 Consulting Engineers. I represent the engineering
11 community.

12 BOARD MEMBER TOWNSEND: Good morning. I'm Dennis
13 Townsend. I represent the telecom industry.

14 CHAIRPERSON PREZEAU: We also have a gentleman in the
15 audience who I hope will be joining us in October as the
16 general public member seat. It potentially is happening.
17 And that is Randy Scott. We'll see. It's pending.

18 So sorry to interrupt.

19 If you would please -- so any other thoughts on
20 Larry's financial presentation and this idea of maybe
21 abandoning the concept of six months of operating reserve
22 and feeling more comfortable with the threshold that
23 Larry's talking about this morning?

24 BOARD MEMBER NORD: I agree with you totally.

25 CHAIRPERSON PREZEAU: Janet.

1 BOARD MEMBER LEWIS: What exactly is that threshold?
2 You mentioned three to four months. I would be more
3 comfortable with four months.

4 CHAIRPERSON PREZEAU: So -- and I don't think few get
5 to -- so four months operating reserve, what is that
6 number, Larry?

7 SECRETARY VANCE: Well, it's about 1.6 million per
8 month. So if we're sitting there at four months, and
9 somebody's looking at the fund and says, "There's \$1.6
10 million there," that's a number that might, of course, be
11 attractive. When you get down to three months, then
12 they're looking at it and seeing there's no excess funds.

13 So that's the place we're in today in today's
14 economy.

15 CHAIRPERSON PREZEAU: So -- Janet.

16 BOARD MEMBER LEWIS: So you're suggesting spending it
17 down to three months?

18 SECRETARY VANCE: Potentially. I'm not looking to
19 spend it down to three months. If with flat revenue, flat
20 revenue puts us at 3.8 if we were to hire seven electrical
21 inspectors, which would be the extent of our allotted
22 authority.

23 CHAIRPERSON PREZEAU: Does our allotted authority
24 time out?

25 SECRETARY VANCE: At the end of the biennium.

1 CHAIRPERSON PREZEAU: Which is?

2 SECRETARY VANCE: Which is 6 of 2015.

3 The other thing that we're having is because of our
4 difficulty staffing is we've got a cumulative variance of
5 \$1.4 million that is projected to be unspent. Now, that's
6 money that we're looking at for putting down some planks
7 for rewriting our mobile inspection program.

8 The other thing that bringing it down to 3.8 or \$3
9 million does is it really doesn't give us any slack for
10 any IT work.

11 CHAIRPERSON PREZEAU: Which we kind of need.

12 SECRETARY VANCE: We kind of need.

13 But it's -- we're in that situation where if it's
14 unspent, then it can be committed elsewhere.

15 That's where we're at today.

16 CHAIRPERSON PREZEAU: So what I'm hearing you say,
17 Larry, is there's not a active commitment to try to spend
18 money to get us down to an artificial number. But what
19 you are looking for from the Board is a general advisement
20 of level of comfort with moving the goal post from six
21 months to three. Is that a --

22 SECRETARY VANCE: Yes.

23 CHAIRPERSON PREZEAU: -- correct characterization?

24 SECRETARY VANCE: That's a correct characterization.

25 CHAIRPERSON PREZEAU: So -- and obviously we don't

1 have to vote on this, but I'm sort of -- you know, how do
2 people feel about that?

3 BOARD MEMBER PHILLIPS: I would agree based on the
4 standard accounting practices.

5 BOARD MEMBER CORNWALL: I would also agree.

6 BOARD MEMBER NORD: I would also agree.

7 BOARD MEMBER CUNNINGHAM: I have just a question
8 maybe for Larry about this is that you mention the IT work
9 that needs to be done. I don't know what it is and how it
10 takes shape. But does it come up as a identified
11 encumbrance in your budget, or is it just a, you know,
12 this nebulous thing that you know you have to address as
13 we move through, but it's something that you can identify
14 and say we have to do this and this is why and --

15 SECRETARY VANCE: It can be something that can be
16 addressed in a supplemental budget proposal or in a budget
17 proposal. Being a dedicated fund, they can allot us money
18 to spend, but if the fund balance isn't there, then we get
19 into a further discussion about whether our fees actually
20 cover the service that we're delivering. So it becomes a
21 larger discussion.

22 The mobile inspection program has been in use for --
23 I've been with the Department for ten years, and it's been
24 used during that entire time. And I think it was two to
25 four years before that when mobile inspections came out.

1 There's been several different rollouts of the program,
2 upgrades, but it's no longer supported. It's in an old
3 platform that's outdated. And when we lose mobile
4 inspections, that's 110 electrical inspectors that are
5 back to pencil and paper. That's going to have a
6 significant impact if we were to ever have that happen.
7 So it's --

8 CHAIRPERSON PREZEAU: That's a bit of an
9 understatement, Larry.

10 SECRETARY VANCE: Yes, yes.

11 So it's something that we're -- that the Department
12 is actively looking at. We just haven't quite -- we've
13 done some business rule writing. We've looked at some
14 options. We've got some estimates. Our IT department has
15 stated that it's going to be \$4 million to rewrite mobile
16 inspections. That's just their initial -- that's their
17 initial estimate.

18 So more to come on that.

19 CHAIRPERSON PREZEAU: Okay. Anything else, Larry.

20 SECRETARY VANCE: No.

21 CHAIRPERSON PREZEAU: So I have one question for you,
22 posing as Jose'. And that is I know that I was part of a
23 stakeholder group, a work group that worked on -- I was
24 very happy to be invited to be a part of that -- to work
25 on that pesky ethics question of barring inspectors from

1 teaching continuing education or electrical continuing
2 education classes or basic classroom training or related
3 supplemental instruction, basic training for trainees.
4 And it was -- I thought it was a very good work session.
5 I thought we made some -- Jose' basically was the chair,
6 if you will, of the work session. It was a broad group of
7 folks. I thought we had some really rich conversation
8 about it. And I'm wondering if you know where that sits
9 right now.

10 SECRETARY VANCE: I'm in the same position as you
11 are. My last interaction was at that meeting. So I'm
12 myself wondering the status of that.

13 CHAIRPERSON PREZEAU: And then the next thing which I
14 would normally ask Jose' -- and this is a little bit odd
15 because as the Interim Chief, I would be asking Jose'
16 what's the situation with the finding of a permanent chief
17 electrical inspector.

18 SECRETARY VANCE: As far as I know, the Department
19 has advertised the position. They have not scheduled
20 interviews or anything at this point. That's the status
21 as I know it.

22 CHAIRPERSON PREZEAU: And I will share with the Board
23 what I know which is that I was contacted by one of the
24 electrical program team members about my ability to
25 participate in the interview process, finding and vetting

1 candidates. So that's about all I know about that.

2 The other thing -- and Larry, I guess lastly since
3 Rod Mutch's fate with the Department was not entirely
4 known when we were together in April, would you please
5 tell the rest of the Board where -- what Rod is doing now.

6 SECRETARY VANCE: Well, I'm very happy to report that
7 Rod's still with the Department. There was a lot of
8 chairs moving around at the time that Rod stepped down in
9 June.

10 Rod was able to relocate to Yakima, be closer to his
11 family. The same time Rod was stepping down, Trent
12 Harris, who was a technical specialist with the
13 Department, decided that he wanted to end his commute from
14 Longview every day -- or Kelso and go to work as an
15 electrical inspector down there. And that opened up a
16 temporary -- that opened up a technical specialist
17 position, which we transferred to Yakima. So Rod is
18 sitting in Yakima as a technical specialist.

19 He'd be here today, but he is -- he's at a
20 engineering firm in Kennewick that is -- that has applied
21 to do -- perform engineering evaluations. So we'll now be
22 -- if this visit is successful, there'll now be five
23 engineers that perform engineering evaluations of
24 industrial utilization equipment.

25 CHAIRPERSON PREZEAU: Which I think is a much

1 healthier number.

2 SECRETARY VANCE: Yes, yes.

3 CHAIRPERSON PREZEAU: I hope it goes well.

4 Okay, thank you, Larry.

5 Any questions for Larry acting as Jose' Rodriguez?

6 All right. Seeing none, let's move on to the next agenda
7 item.

8

9 Item 3. Appeals

10

11 Item 3.c. Jack Brodhead Electrical

12

13 CHAIRPERSON PREZEAU: And before I call the parties
14 up, what I would like to do is address agenda item 3.c.
15 That's Jack Brodhead Electrical - summary judgment. It is
16 my understanding that that has been settled. So we're not
17 going to -- you can cross that off your agenda.

18

19 Item 3.d. Earthwise Excavation

20

21 CHAIRPERSON PREZEAU: And certainly you can see that
22 agenda item 3.d., Earthwise Excavation has been continued.
23 The continuance was granted. So that will be -- if it is
24 not settled, that will come before the Board on October
25 30th.

1 Item 3.a. Metalsmiths, Inc.

2

3 CHAIRPERSON PREZEAU: So going back to agenda item
4 3.a. Metalsmiths, Inc., presentment of final order.

5 So if we could please have the parties that are
6 related to Metalsmiths, Inc., and the presentment of the
7 final order.

8 Is Mr. Cray present?

9 Let the record reflect that Mr. Cray of Metalsmiths,
10 Inc., is not present this morning. In which case, since
11 Mr. Cray is not present, I would ask Ms. Kellogg to please
12 present the final order. I know that Pam, our attorney,
13 has reviewed it for accuracy and believes that it is in
14 order. So if you would please, Ms. Kellogg.

15 ASSISTANT ATTORNEY GENERAL KELLOGG: Yes. I am
16 presenting for Paul Weideman. And this order it's my
17 understanding that the Board reviewed in significant
18 detail as far as what the findings should be and the
19 conclusions of law at the last meeting. And therefore,
20 the Department presents this final order for signature.

21 CHAIRPERSON PREZEAU: And since there's no
22 opposition, I don't get to read my super cool script. So
23 we're going to go forward and sign the order.

24 ASSISTANT ATTORNEY GENERAL KELLOGG: And do you want
25 me to present an order to you --

1 CHAIRPERSON PREZEAU: I believe --

2 ASSISTANT ATTORNEY GENERAL KELLOGG: -- or do you
3 want to sign the one you have?

4 CHAIRPERSON PREZEAU: -- I have one. I have one.

5 Very good. So all of the Board members have a copy
6 of the final order for Metalsmiths, Inc., which as you all
7 recall at the last Board meeting we heard the Department's
8 appeal to the proposed decision and order issued September
9 30, 2013, in the matter of Metalsmiths, Inc., OAH docket
10 number 2013-LI-0091. That case involves citation numbers
11 ECHAE00962, ECHAE00963, and ECHAE00964.

12 And following that hearing, the Board rendered its
13 decision reversing the ALJ's decision and affirming the
14 citations. Certainly the details of our decision are
15 reflected in the minutes from our last meeting. So I
16 wanted to make sure that even though Mr. Cray from
17 Metalsmiths is not present, if there are any -- if the
18 Board would review the order, if you have any objections.

19 Pam has certainly reviewed it and believes it is
20 consistent with the actions taken at the April Board
21 meeting.

22 ASSISTANT ATTORNEY GENERAL REULAND: For the record,
23 if I could make a statement about my contact with
24 Mr. Cray.

25 I just want to let the Board members know that

1 Mr. Cray did have notice of the presentation here today.
2 He had notice at the last meeting. In addition, he was
3 provided with my e-mail.

4 He did e-mail me back on July 18th in terms of
5 whether he would have the opportunity to have the Board
6 reconsider its decision. I advised him what a
7 presentation entailed, and that it was not reopening the
8 case. I then also told him that if he had comments, he
9 needed to be here. So I think that Mr. Cray does have
10 adequate notice of his opportunity to be here and contest
11 the order at this time.

12 CHAIRPERSON PREZEAU: Very good. Thank you, Pam.

13 So I've signed the final order. And also the order
14 reflects the fact that Mr. Cray was not here.

15 ASSISTANT ATTORNEY GENERAL KELLOGG: Thank you.

16 CHAIRPERSON PREZEAU: Thank you, Ms. Kellogg.

17

18 Item 3.b. Gregory Rix - Comfort Zone Heating and Cooling
19

20 CHAIRPERSON PREZEAU: Okay. So we are up for agenda
21 item 3.b. which is Gregory Rix - Comfort Zone Heating and
22 Cooling - presentment of final order.

23 Is Mr. Rix present? Is Mr. Rix present? I'm going
24 to do this three times. Is Mr. Rix present?

25 Okay, so we are -- and Ms. Kellogg, are you

1 presenting the final order in this matter, Mr. Rix and
2 Comfort Zone Heating and Cooling?

3 ASSISTANT ATTORNEY GENERAL KELLOGG: Yes, I am.

4 CHAIRPERSON PREZEAU: Very good.

5 So I would like to -- this is a little bit different
6 than the presentment that we just finished with
7 Metalsmiths, and here's the reason why.

8 If you recall in April at the April Board meeting, I
9 explained to the Board that I exercised some authority
10 that I have as the presiding officer of the Board to
11 entertain a decision about the Department's motion for
12 summary judgement in this case -- matter of Gregory Rix
13 and Comfort Zone Heating and Cooling. And the reason that
14 I did that was Mr. Rix and the Department had entered into
15 a settlement agreement that was pretty definitive. And it
16 was quite definitive that Mr. Rix and Comfort Zone Heating
17 did not comply with that settlement agreement.

18 And the motion for -- I granted the motion for
19 summary judgement after giving Mr. Rix access and
20 opportunity to explain why I shouldn't say yes to the
21 motion for summary judgement, but being no material
22 disagreement, he did not have any -- he actually admitted
23 that he had breached the settlement agreement. So there
24 was nothing to discuss. So when given notice that his --
25 that I had -- as the Chair I had agreed with the summary

1 judgement, he objected. So we gave him -- we responded
2 and gave him the opportunity to be here today, not to
3 plead his case in terms of all the events up to this
4 point, it was basically, hey, explain to me why the final
5 order that had been crafted by the Department through its
6 -- through the Attorney General's office, why it was in
7 error. And clearly Mr. Rix is not -- he did not offer any
8 alternative to the language in the final order crafted by
9 the Department through the Attorney General. And the fact
10 that he is not here today to offer any alternative
11 language to the final order tells me that we are going to
12 go forward with the final order as approved previously.

13 So you don't have a copy of that final order in your
14 packets since I made that -- took that action as the
15 presiding officer.

16 And Ms. Kellogg, I do have that final order in the
17 matter of -- and this is a suspension of Gregory D. Rix's
18 electrical certificate, which is part of the language in
19 the final -- or in the settlement agreement.

20 And Pam has reviewed the final order in terms of
21 accuracy to reflect the actions taken thus far. And so --

22 ASSISTANT ATTORNEY GENERAL REULAND: I'm just
23 indicating that he did not appear.

24 CHAIRPERSON PREZEAU: So unless, Ms. Kellogg, you
25 have anything you would like to add further?

1 ASSISTANT ATTORNEY GENERAL KELLOGG: Nothing further.
2 Thank you.

3 CHAIRPERSON PREZEAU: Then I'm going to go ahead and
4 sign the final order.

5 ASSISTANT ATTORNEY GENERAL KELLOGG: Thank you.

6 ASSISTANT ATTORNEY GENERAL REULAND: Nancy, you --

7 CHAIRPERSON PREZEAU: You have to sign it.

8 ASSISTANT ATTORNEY GENERAL REULAND: -- you have to
9 sign.

10 CHAIRPERSON PREZEAU: Okay. Excellent. Thank you.

11

12 Item 3.e. Burris Electric - Stephen Burris

13

14 CHAIRPERSON PREZEAU: So we are now at agenda item
15 3.e. which is Burris Electric and Stephen Burris.

16 If we could have the corresponding parties please
17 come up to the table.

18 So before we get started, I have a little bit of
19 housekeeping to do. And I want the record to reflect that
20 we do have eight Board members here this morning, which
21 constitutes a quorum. One of the eight Board members
22 includes Mr. Brickey who is a non-voting member of the
23 Board. So I want the parties to understand that there was
24 research performed to ensure that even though Mr. Brickey
25 is helping us constitute a full quorum, and in light of

1 the fact that he is not a voting member, I want the record
2 to reflect that we still have established a quorum under
3 Roberts Rules of Order.

4 I've reviewed a couple of pieces of relevant
5 documents including our Washington State Electrical Board
6 Bylaws which indicate that a quorum is a -- for a regular
7 or special meeting of the Board shall be a simple majority
8 of the Board members. It says it is silent on whether or
9 not they have to be voting members. Additionally, if you
10 consult the Electrical Board appellate process summary,
11 which is WAC 296-46B-995, it also reads, "A majority of
12 the board constitutes a quorum for purposes of rendering
13 any decision." So that is specific to the appellate
14 process which we are about to undertake. And
15 additionally, if you consult Roberts Rules of Order, the
16 newly revised version, which is also according to our
17 bylaws has parliamentary authority over our actions, a
18 quorum reflects a) "When a quorum is present, a majority
19 vote, which is a majority of the votes cast ignoring
20 blanks is sufficient for the adoption of any motion that
21 is in order." So I just wanted the record to reflect that
22 we are -- we have a representative full strength and full
23 voting quorum in the room today. Great.

24 So in the matter of Burriss Electric and Stephen
25 Burriss, I would ask that -- I'm going to read from a

1 prepared script and then ask the parties to introduce
2 themselves, and then I'm going to explain the procedure to
3 the parties and to the Board members.

4 So good morning. My name is Tracy Prezeau. I am the
5 Chair of the Electrical Board. The matter before us today
6 is an appeal in the matter of Burriss Electric, LLC -
7 Stephen Burriss, docket number OAH -- excuse me -- OAH
8 docket number 2013-LI-0173.

9 This hearing is being held pursuant to due and proper
10 notice to all interested parties in Tumwater, Washington
11 on July 31, 2014, at approximately 9:47 a.m.

12 This is an appeal from a proposed decision and order
13 granted in part and denied in part the appellant's motion
14 to dismiss the citation and notice numbers EMABQ04125 and
15 EMABQ04126 in a hearing that was conducted on March 27 and
16 28, 2014. Those citations were issued by the Department
17 of Labor and Industries on May 16, 2013. It is further my
18 understanding that the appellant and the Department has
19 timely appealed that decision to the Electrical Board.

20 At this time the appellant, Steven Burriss, through
21 his attorney I believe is present, and the Department is
22 present. So I would ask that the parties please introduce
23 themselves.

24 MR. SALAZAR: Madam Chair, I'm Mike Salazar, attorney
25 at law from Gig Harbor, Washington.

1 And this is the appellant, Steve Burris who is the
2 owner and operator of Burris Electric.

3 CHAIRPERSON PREZEAU: Very good. Please spell your
4 names for the court reporter.

5 MR. SALAZAR: Michael -- M-I-C-H-A-E-L, P, Salazar --
6 S-A-L-A-Z-A-R.

7 MR. BURRIS: And Stephen -- S-T-E-P-H-E-N -- Burris
8 -- B-U-R-R-I-S.

9 ASSISTANT ATTORNEY GENERAL GREER: I'm Lucretia
10 Greer. I'm an assistant attorney general on behalf of the
11 Department. My first name is spelled L-U-C-R-E-T-I-A.
12 And Greer is G-R-E-E-R.

13 CHAIRPERSON PREZEAU: Okay. The Electrical Board is
14 the legal body authorized by the legislature to not only
15 advise the Department regarding the electrical program,
16 but to hear appeals when the Department issues citations
17 or takes some other adverse action regarding an electrical
18 license or certification.

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

22 When the Department issues penalties, the hearing is
23 assigned to the Office of Administrative Hearings to
24 conduct the hearing pursuant to the Administrative
25 Procedures Act.

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

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

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

15 At the conclusion of the hearing, the Board will
16 determine if the findings and conclusions reached by the
17 ALJ are supported by the facts and the rules pertaining to
18 electrical installations.

19 Any questions before we begin?

20 ASSISTANT ATTORNEY GENERAL GREER: None from the
21 Department. Thank you.

22 CHAIRPERSON PREZEAU: Mr. Salazar?

23 MR. SALAZAR: No.

24 CHAIRPERSON PREZEAU: Board members?

25 I want to caution the Board members in that -- I am

1 highly confident that everybody in here read both of these
2 appeals, and so you already understand that these two
3 appeals although separate have some -- have a
4 relationship. I want to caution the Board members, in
5 each of these appeals you can only render decisions that
6 are based on information contained in the individual
7 appeal packets. You cannot take information from one and
8 insert it into the other to help guide your
9 decision-making. Is that clear?

10 THE BOARD: (Nodding affirmatively.)

11 CHAIRPERSON PREZEAU: Very good.

12 I am a little confused on who gets to go first.
13 Because technically you are both appealing the decision of
14 the ALJ. Although, what originally -- Mr. Burris through
15 his attorney, Mr. Salazar, has appealed the citations
16 which got us to the ALJ, and you are also the moving party
17 requesting the ALJ to dismiss the citations. And as such
18 I think it makes sense to have you give your case first.

19 MR. SALAZAR: And that would be fine.

20 CHAIRPERSON PREZEAU: Thank you. So please,
21 Mr. Salazar.

22 MR. SALAZAR: Board members, Madam Chair, Mr. Burris
23 is appealing an initial order by Administrative Law Judge
24 Robert Krabill dated May 23, 2014, and most specifically
25 paragraph 6.1 of that order -- or excuse me -- 6.2 of that

1 order which did not dismiss two citations which were
2 issued against Mr. Burriss and his company, Burriss
3 Electric, from February 18, 2011, and April 29, 2011, two
4 jobs which he was the electrical contractor at in Bellevue
5 and Port Orchard.

6 We would ask that the Board as well as the Chair
7 affirm the decision in paragraph 6.1, dismissing citations
8 04125 and 04126 for two jobs which were performed April --
9 February -- excuse me -- 11/22/10 and December 3rd of
10 2010. We do believe that Judge Krabill's decision is
11 consistent with our motion to dismiss.

12 The statute of limitations, RCW 4.16.100 which
13 establishes a two-year period for a citation to be issued
14 against an electrical contractor in the state of
15 Washington for an alleged violation of electrical law.

16 Judge Krabill in his decision did recognize that
17 there's a two-year statute of limitations which is
18 applicable in this case. The State themselves admit that
19 that is the applicable statute, the statute of limitations
20 in this case.

21 The record demonstrates that Mr. Burriss performed all
22 work on these jobs and did not -- he did so pursuant to a
23 permit which he obtained from the state of Washington.
24 Each of the jobs that he performed -- he or his employees
25 performed the electrical work as his declaration attests.

1 There were numerous inspections of each of the four
2 addresses where these permitted jobs were performed.
3 During the job they were inspected at multiple times. At
4 the conclusion of the job, he submitted his proper
5 paperwork. And the citation -- or the permits were closed
6 by the state of Washington indicating that that job was
7 complete.

8 Approximately a year and a half later, two of Legacy
9 Communications employees came forward to Inspector Bob
10 Matson of the Department of Labor and Industries and
11 informed him that they had been doing electrical work
12 which they were not licensed to do. As part of that
13 process, they had appealed their firing for doing just
14 that, and then alleged that Legacy had engaged in
15 practices together essentially with Mr. Burriss whereby
16 Mr. Burriss would obtain permits for Legacy, and then not
17 perform the work that those permits called for.

18 Mr. Burriss at the hearing on March 26th -- or March
19 27th and March 28th provided a declaration indicating that
20 his workers and his workers only did that work, that the
21 cita -- or the permits that he had obtained were closed
22 out properly after the appropriate inspections, and that
23 it was more than two years since the last of those jobs
24 which was April 29, 2011.

25 The testimony at the hearing on the motion to dismiss

1 was that Inspector Bob Matson had initially received a
2 complaint somewhere I believe in March of 2012, at which
3 time the file was assigned or this box of files that he
4 relies upon was assigned to Jose' Manzaras (sic) I believe
5 his name was, an electrical inspector who worked out of
6 the Yakima office.

7 It is unclear what, if anything, Inspector Manzaras
8 did with the file for nearly a year until it was returned
9 to Inspector Matson in March of 2013.

10 In March of 2013, knowing that the statute of
11 limitations was about to lapse, he initiated an
12 investigation, but he did not complete that or issue
13 citations until well after the statute of limitations had
14 lapsed here.

15 There appears to be no reason for excusing the
16 statute of limitations in this matter. It appears that
17 the Department did not -- or the inspector in this case
18 did not simply follow through in its investigation and
19 issue a citation in time. The statute itself is clear.
20 Two years is the statute of limitations for the citations
21 to be issued. That was not complied with in this case.
22 And it's readily asserted by everybody involved, including
23 Judge Krabill, that that is what occurred.

24 Judge Krabill's order reinstated or at least left in
25 place citation 04125 and 04126 for February 18 and April

1 29, 2011, based on his interpretation of what constituted
2 interim inspections on these two job sites.

3 Mr. Burris contrarily asserting in his declaration
4 that there were numerous inspections before the job was
5 completed, and that the Department had ample time to
6 discover whatever the alleged violations were.

7 Mr. Burris in his declaration denies that he
8 supervised Legacy employees or otherwise authorized them
9 to perform electrical work on any job site that he had a
10 permit for.

11 There is one case on this issue. It involved an oil
12 spill in Commencement Bay in 1995 or so. The ship spilled
13 oil in Commencement Bay, didn't report that spill, and the
14 State was unable to determine until well after the statute
15 of limitations which ship that oil had come from. In that
16 instance, the State did not have any way of knowing what
17 had occurred in Commencement Bay with that oil spillage,
18 and the discovery rule which allows for an extension of
19 the statute of limitations based on when something is
20 learned did apply in that case.

21 In this case, U.S. Oil is still the controlling
22 decision, and it is the only decision that has been made
23 under this statute since it was enacted nearly 100 years
24 ago.

25 In this case, Mr. Burris, the appellant, alleges that

1 these two charges which have been left in place for the
2 Bellevue and Port Orchard jobs as recited in paragraph 6.2
3 should be dismissed contrary to Judge Krabill's ruling.
4 The basis for that is his declaration. And the facts of
5 the case will show that he did perform all electrical work
6 on these work sites, that he did so with inspections
7 taking place throughout. He did supervise or otherwise
8 order Legacy employees to do that work. And it was more
9 than two years before the citations or these matters were
10 raised.

11 Based on that, we would ask that the Board reverse
12 the decision of Judge Krabill and dismiss citations 04125
13 and 04126 for both the Bellevue and Port Orchard jobs.

14 CHAIRPERSON PREZEAU: Thank you, Mr. Salazar.

15 Mr. Burris, do you have anything you would like to
16 add?

17 MR. BURRIS: No, thank you.

18 CHAIRPERSON PREZEAU: Ms. Greer.

19 ASSISTANT ATTORNEY GENERAL GREER: Good morning. The
20 Department of Labor and Industries has also appealed Judge
21 Krabill's interim order. The Department is asking the
22 Board to reverse 6.1 of the order in which Judge Krabill
23 found that the Board -- Labor and Industries is barred
24 from pursuing citations 04125 and 04126 at the Hoquiam and
25 Concrete job sites.

1 It is agreed that the relevant statute of limitations
2 is the two-year statute of limitations as set forth in RCW
3 4.16. What is at issue is when that statute of
4 limitations the two years should start to run.

5 Under normal circumstances, a statute of limitations,
6 whether it's a two-year one or a three-year one for such
7 events as a -- for example, a car accident begin to run at
8 the time of the event. There is an exception to that, and
9 it's a judicially created discovery rule.

10 The discovery rule was first adopted in Washington in
11 1969 in a medical malpractice case when the injured person
12 had a surgical sponge left in her body for 22 years before
13 the cause of her continuing pain could be discovered. The
14 courts have applied the discovery rule to a variety of
15 cases in circumstances such as libel, products liability,
16 medical malpractice, the negligent cancellation of
17 insurance policies, and a variety of things such as that.

18 There is one case interpreting the statute that's
19 before you, the two-year statute of limitations concerning
20 penalties assessed by the State against a company or
21 individual.

22 In this case, to calculate when the statute of
23 limitations could begin to run, the Department selected
24 the date the citations were issued. And those citations,
25 the issuing date is easily set forth in Judge Krabill's

1 order which is the easiest way to track them.

2 The violation dates selected by the Department are
3 the dates the permits were pulled, not the dates the work
4 was probably done, but the dates the permits were pulled.
5 If you calculate -- and Judge Krabill's order -- this is
6 on page 7 for the ease of the Board -- the Bellevue site,
7 the alleged date of violation is February 18th of 2011.
8 If you go forward roughly two years, the statute of
9 limitations would have run in February of 2013.

10 The Port Orchard site is 4/29/11. The statute would
11 have run under normal circumstances on roughly April 29th
12 of 2013.

13 The Concrete job, the date the permit was pulled is
14 2/3 of '10. The statute would have run early December of
15 2012.

16 The Hoquiam site, 11/22/10, the statute under normal
17 circumstances would run on November 22nd approximately of
18 2012.

19 However, in this case, the Department had no
20 knowledge or information that Burriss Electric was sharing
21 -- illegally sharing work under a permit until Mr. Slowey
22 contacted the Department of Labor and Industries on March
23 26, 2012. And the focus of Mr. Slowey's information at
24 that time was concerning Legacy Telecommunications, not
25 Burriss Electric.

1 The Department ascertained Burris Electric's
2 involvement in the Legacy investigation in early -- in
3 December of 2012, early January 2013 when in an e-mail to
4 Inspector Manjares, Legacy Communications provided a list
5 of subcontractors, electrical companies they had used to
6 perform work. Burris Electric was then listed.

7 At that time shortly thereafter, the case was
8 transferred back to Mr. Matson. Mr. Matson noticed the
9 e-mail. He reviewed the records, noticed that there were
10 permits, checked the permits pulled by Burris Electric,
11 they were on Legacy job sites, and he conducted the rest
12 of the investigation, met with Mr. Burris, met with
13 Mr. Slowey, and ultimately issued the citations in May of
14 2013.

15 It's the Department's position that Judge Krabill
16 properly applied the discovery rule and extended the
17 statute of limitations on the Bellevue and Port Orchard
18 citations. It's the Department's position that he
19 improperly did not extend the statute of limitations for
20 the Concrete and Hoquiam sites.

21 On the Bellevue site, the record showed the
22 information that was provided to the ALJ is that the State
23 of Washington did not do any of the inspections; it was
24 done by the City of Bellevue. Therefore, the Department
25 of Labor of Industries could not have possibly known who

1 was actually doing the work at that site because the State
2 wasn't doing any of the inspections; Bellevue was.

3 In Port Orchard -- the Port Orchard site, there were
4 no interim inspections. There was only a final
5 inspection. The Department had no knowledge who had
6 actually done the work.

7 In the Concrete and Hoquiam sites, there were interim
8 inspections. But testimony from Mr. Matson is and the
9 Board is I'm sure aware, a permit is pulled, the work is
10 done, the work is finished, an inspection is requested.
11 These were the installation of generators. The inspector
12 comes out, he checks the work, if it needs a correction he
13 leaves the correction notice, and he comes back out at
14 another time.

15 The Department had no way of knowing who had actually
16 done each piece of the work on these job sites in Concrete
17 and Hoquiam unless by serendipity the inspector was out,
18 somebody was still doing the work, and they asked
19 questions as to who was on the site.

20 The State does not have a master list of the
21 employees for each of the contractor to check when you go
22 out to a job site. So therefore, it's the Department's
23 position that the statute of limitations should have been
24 extended on all the sites.

25 And I'd like to point out in the U.S. Oil case, which

1 I believe a copy is in tab 3, the court noted that the
2 purpose of the statute of limitations is partly to serve
3 justice. There's a balancing on a statute of limitations
4 when you're looking at the discovery rule. You look at
5 whether or not a justifiable grievance case should be
6 brought to the court, how fair is that, versus how fair is
7 it to have a stale claim brought forward. That's where
8 the balancing is. And in doing the balancing in U.S. Oil,
9 the court noted that you don't want to reward a clever
10 defendant by application of the statute of limitations and
11 not applying a discovery rule. Justice and the purpose of
12 the statute of limitations is not served when the statute
13 runs when the information concerning the violation is in
14 the possession and control of the violator, the defendant.
15 In the U.S. Oil case, it was in the possession of the oil
16 company. They knew they spilled the oil. They didn't
17 report it as they were required to do. The State had no
18 way of knowing which ship spilled the oil.

19 In this case, until Mr. Slowey walked into the
20 Department's office and until the records were searched
21 and until basically the match game occurred of who pulled
22 what permit, where was the work done, the Department
23 couldn't possibly have known what was happening.

24 To apply the strict statute of limitations would
25 reward Stephen Burris and his company for basically being

1 clever defendants. He is an experienced -- this is an
2 experienced company. Mr. Burris is an experienced
3 electrical administrator. He knows quite well you do the
4 work, within a period of time after the work is done, you
5 wait, you call in for the inspection. The homeowner can
6 be available to let the inspector in if need be. The work
7 gets looked at. If the work is okay, it gets signed off
8 on. Nobody knows except the people out doing the work who
9 is actually doing the work.

10 That is the very type of conduct that the court
11 condemned in the U.S. Oil case. It's the very conduct the
12 Department asserts occurred here.

13 We are asking that the Board reverse Judge Krabill's
14 decision that dismissed the citations for the Concrete and
15 Hoquiam sites and affirm the decision which allows the
16 matter to go forward on the merits concerning the
17 citations for Bellevue and Port Orchard.

18 Thank you for your time and your attention.

19 CHAIRPERSON PREZEAU: Any questions from the Board
20 members?

21 I have lots and lots of thoughts on this. And I
22 don't want to go first if somebody else wants to, or I can
23 jump in here. I don't see anybody getting all excited, so
24 here we go.

25 So I am actually very excited about this case. And

1 the reason I'm very excited about this case -- because
2 oftentimes when -- I've been on this Board since 2005, and
3 I've read a lot of ALJ decisions and tried to -- I am not
4 an attorney nor do I play one on television. So I grapple
5 a little bit with some of the legal pieces that are a part
6 of the appeals.

7 The reason I am so thrilled to hear this case is if
8 you go in the record that the Board members have to page
9 180, and I am reading from Judge Krabill's comments. And
10 Judge Krabill starting on line 19 says, "As sites 2 and 3
11 which were addressed yesterday, we had everything in front
12 of us." This is where it gets interesting. "I
13 interpreted the permit information provided with
14 Mr. Burriss' declaration the best I could. And as I
15 indicated, it is possible that with more information I
16 could have interpreted it better or differently, more like
17 Mr. Burriss, a professional electrician, might have."

18 Well, this is why I'm excited because guess what? I
19 am a professional electrician. And so therefore, I am
20 fluent in understanding what happens when contractors or
21 homeowners request a permit for electrical work to be done
22 and then request the inspection process, whether it is a
23 final inspection or a cover inspection or some other
24 inspection to energize, which Mr. Krabill referred to as
25 interim inspections. And what I know to be true, having

1 called for inspections, having be a part on electrical
2 work site when the inspector is there, and have an
3 inspector come to a work site that I was at but not
4 present at when the inspection happened. So it is highly
5 possible that an electrical contracting firm or a
6 homeowner would call for inspection, whether it was
7 interim or final, and none of the workers performing the
8 work would be there.

9 And certainly I find it very difficult to believe
10 that in the event that a electrical contractor was
11 violating the electrical statute by employing uncertified
12 electricians or employing uncert -- or certified
13 electricians but out of ratio with journey level workers
14 and non-journey level workers, it is my experience that if
15 you know that -- you know when the inspector is coming.
16 You almost know the hour that the inspector is coming.
17 Why would you have the workers -- if you were violating
18 the law, why would you have the workers there so the
19 inspector could interact with them?

20 I also -- so I find it that -- I am relieved actually
21 as I read the record that when I read Judge Krabill's
22 decision about that he applied the discovery rule, but --
23 and I think -- again, I'm not an attorney; he's a judge.
24 But I think he missed on the application of that rule, and
25 he actually says, as I said on page 180, that "I could

1 have interpreted it better or differently, more like
2 Mr. Burriss, a professional electrician"

3 So I look at this record, and there's a lot going
4 on certainly, and I also believe that what resonates
5 with me and with this Board, and I'm going to read from
6 Ms. Greer's -- the Department's brief. So I'm on page
7 hand numbered 11 in our record. And again, this is the
8 Department's brief. So this is in response to Judge
9 Krabill's order granting in part and denying in part the
10 appellant's motion. And I am reading from -- I'll begin
11 -- my attention starts on line 3 of page 11. And it says,
12 "The Washington Supreme Court in its decision in US Oil
13 (versus Department) of Ecology expressly held that the
14 discovery rule applies to civil penalties issued by the
15 Department of Ecology. US Oil, 96 Wn.2d 85 at 94. The
16 Court's reasoning applies equally to this case. Without a
17 discovery rule, electrical contractors can violate the
18 provisions of RCW Chapter 19.28 which are designed to
19 promote public safety with impunity and escape penalties
20 for their actions, unless the Department is fortunate
21 enough to observe the violation during an inspection on a
22 work site."

23 I found it interesting that this U.S. Oil case I
24 think is very apt. And the reason that I say that is
25 because even though we have a complete team of -- an

1 adequate team of field inspectors, both ECORE and
2 installation inspectors in the field, what we also know to
3 be true is that especially in more remote parts of
4 Washington like Concrete, those inspectors would only be
5 there -- compliance inspectors most likely are not going
6 to be there to -- the same case as with U.S. Oil -- to
7 actually serendipitously observe some type of infraction
8 of the electrical statute.

9 So I believe -- those are my thoughts. And I
10 certainly welcome any questions for the parties that are
11 in front of us or any additional comments.

12 BOARD MEMBER CUNNINGHAM: I have a question.

13 CHAIRPERSON PREZEAU: Go ahead.

14 BOARD MEMBER CUNNINGHAM: Is there any documentation
15 in the record that I guess definitively confirms that
16 Mr. Burris or his employees were working as the
17 subcontractor for Legacy on all these jobs? I would think
18 that if he was performing the work as their subcontractor,
19 they would have some kind of documentation that says, You
20 do this job at this site, and this is the scope of work,
21 and we'll go pull the permit and do the work as your
22 subcontractor. I didn't find that anywhere in here.

23 CHAIRPERSON PREZEAU: I believe if my memory serves
24 me correctly that in the transcript in --

25 BOARD MEMBER CUNNINGHAM: Other than in the

1 declaration.

2 CHAIRPERSON PREZEAU: -- Bob Matson's declaration of
3 the investigation that he performed, he requested
4 information from Mr. Burriss or wanted to go to his office
5 and review his records, and Mr. Burriss indicated that he
6 worked out of his home, and he doesn't routinely keep
7 those records.

8 BOARD MEMBER CUNNINGHAM: I recall the same thing.

9 And then I wanted to point everybody's attention to
10 page 34 under Mr. Matson's -- or I'm sorry -- in the
11 Office of Administrative Hearings, it talks -- it says,
12 "... Mr. Burriss admitted in a statement against interest
13 and denied in a subsequent declaration submitted in this
14 matter."

15 CHAIRPERSON PREZEAU: Hang on. I want to --

16 BOARD MEMBER CUNNINGHAM: This is part 4.6 of the
17 notice to the Department.

18 So Mr. Matson's own interview with Mr. Burriss and
19 Mr. Slowey and Mr. Baum, he allegedly admitted to having
20 his other entities workers performing work under his
21 permit, and then later in the official declarations that
22 were part of his packet reverses himself. So I found that
23 a little perplexing.

24 CHAIRPERSON PREZEAU: Correct.

25 BOARD MEMBER NORD: And I found the same questions on

1 page 227 of our packet.

2 CHAIRPERSON PREZEAU: Hang on. Let people get there.

3 BOARD MEMBER NORD: And I thought this was

4 interesting.

5 When Mr. Burris and his associate, James, were
6 interviewed by the Department, they were asked three
7 questions.

8 "Question #1: Who performed all the grounding on
9 residential list? including installation of ground rods
10 and #2 bare conductors for grounding system?"

11 Mr. Burris answered, "Legacy, Lee and Michael."

12 "Question #2: Did you (being Burris Electric LLC)
13 allow or have Legacy employees install PVC conduit, help
14 pull current conducting wiring on residential list?"

15 Steve answered, "Yes."

16 "Questions #3: Were you ever told by Tom Tracy with
17 Legacy Telecommunications Inc. to use his workers to help
18 perform electrical installations on residential list?"

19 Steve answered, "Yes."

20 I found that to be very interesting statements on the
21 part of Mr. Burris.

22 CHAIRPERSON PREZEAU: Any other thoughts? Pam,
23 please.

24 ASSISTANT ATTORNEY GENERAL REULAND: I just wanted to
25 caution the Board members that this is before the Board on

1 a motion to dismiss, not on a hearing on the merits in
2 terms of the underlying validity of the allegations. So
3 obviously the statements were submitted just for purposes
4 of the issue of the statute of limitations and the
5 timeliness of the citations. If the Board were to -- part
6 of this matter is going back to the ALJ for a hearing on
7 the matter on the merits, and either parts or all of it
8 are going to go back to the ALJ for a hearing on the
9 merits or maybe nothing, depending on your ruling. But
10 none of those statements have been subject to
11 cross-examination and you shouldn't base your decision on
12 the statute of limitations on the conclusion regarding the
13 merits of the citations.

14 CHAIRPERSON PREZEAU: Good point. Yeah, we are
15 basically being asked solely the question of statute of
16 limitations.

17 MR. SALAZAR: Are we allowed to say any more ...

18 CHAIRPERSON PREZEAU: I want to see if there's any
19 questions of the Board members about the jurisdiction that
20 we have today.

21 And if not, Mr. Salazar, if you would like to make a
22 comment.

23 MR. SALAZAR: I'd like to concur with what the AG
24 just advised the Board. The argument here is not a
25 procedural issue of whether the statute was complied with.

1 It's clear that it wasn't complied with. It's the reason
2 it wasn't complied with that negates the extension of the
3 discovery rule, and that is that whether we're talking
4 about April 29th of 2013 or not, which we're not because
5 it was May 16th when he filed the citations, they had this
6 knowledge from a year earlier, March of 2012, and did
7 nothing in this record to demonstrate why they couldn't
8 have simply issued the citations within the two-year
9 statute of limitations eliminating this argument
10 altogether. That was the focus. That was the two-day
11 hearing that we had on March 27th and March 28th. We
12 didn't get to the actual merits. And I would concur that
13 those statements are on cross-examination.

14 The focus of this appeal is that a State inspector
15 sat on this file and allowed the statute of limitations to
16 lapse for no good reason. And an excuse is not a good
17 reason to establish public policy.

18 CHAIRPERSON PREZEAU: Ms. Greer, would you like an
19 opportunity?

20 ASSISTANT ATTORNEY GENERAL GREER: Yes. Thank you.

21 The Department learned of Legacy and issues
22 concerning Legacy first. It was not for a period of
23 several months that there was sufficient information to
24 alert the Department that Burris Electric was possibly
25 involved with Legacy Communications, and that was only

1 when we received an e-mail listing Burriss Electric as
2 doing electrical work on behalf of Legacy. And that was
3 in an e-mail in late of 2012. The Department could not
4 have known any earlier than that time about it. If you
5 look at the very, very earliest the Department could have
6 known of the issues concerning Burriss is when Lee Slowey
7 walked into the Department's office. If you look at when
8 we knew to connect dots with Burriss, it was not until the
9 e-mail was received. So the Defendant's position is that
10 Burriss Electric -- (inaudible) -- on anything. It was a
11 lot of information to go through. A lot of it was very
12 detailed, and it takes time.

13 So we submit that the ALJ's order that the Burriss two
14 citations, two against Legacy -- two against Burriss, two
15 against Steven Burriss as the administrator, that those
16 citations should be allowed to go forward to a merits
17 hearing, and the rest of his decision should be affirmed.

18 MR. SALAZAR: I would respectfully add: The
19 testimony at the hearing was that Inspector Matson had
20 over a year, 15 months to act. There was no reason why he
21 didn't act sooner. That's what the testimony was at the
22 hearing. He produced calendars on which he has relatives'
23 birthdays. He knew exactly what days he was going to be
24 off. He knew what days he was going to be at work. It
25 was one box of a set of records that could have taken any

1 one of us an hour or two to go through and then proceed
2 with an investigation. There are gaps that are 15 months
3 long, at least 12, before he allegedly initiated his
4 re-investigation in March of 2013. There is a gap there
5 that begs questions why did nothing get done. And that's
6 simple. Because they didn't act. And that is not a
7 reason to extend the statute of limitations in this case.
8 They made a mistake. They are responsible for that. The
9 statute doesn't say in its language that we allow this
10 person to excuse themselves because they didn't do their
11 job.

12 If the Department thought there were violations of
13 electrical law, they had a certain amount of time to bring
14 that citation. They didn't do it, and they don't have a
15 good reason for why they didn't do it.

16 CHAIRPERSON PREZEAU: Ms. Greer, would you like an
17 opportunity?

18 ASSISTANT ATTORNEY GENERAL GREER: No. I -- it's
19 very apparent that the Board has reviewed the record.
20 You've heard our arguments. I have nothing further to
21 say. Thank you.

22 CHAIRPERSON PREZEAU: So what I believe that Judge
23 Krabill has applied is the -- from my understanding is the
24 discovery rule going back to March 26, 2012, in which case
25 -- and I hear Mr. Salazar's frustration, and I actually

1 share your frustration in the fact that the Department was
2 made aware or the threshold of new or should have known,
3 and I agree that it is on March -- commences on March 26,
4 2012, which would give the Department, if we have a
5 two-year statute of limitations which all parties agree is
6 applicable including the ALJ, that would actually give the
7 Department until March 26, 2014, to render a decision.
8 And, in fact, the citations were authored and made -- were
9 served May 16, 2013, which is well within the statute of
10 limitations after applying the discovery rule.

11 So although I -- Mr. Salazar, I share your
12 frustration. I wish -- it does not make me -- it does not
13 inspire me with a terrific amount of confidence that it
14 took the Department that long or that there were
15 interruptions in the investigation. I do believe
16 reviewing of the record that when Mr. Matson was
17 reassigned to the case, it was somewhat expedited in terms
18 of the investigation and the citations issued.

19 I would like to hear the Board's thoughts, if any, on
20 what we are really focusing on which is the statute of
21 limitations and application of discovery rule.

22 MR. SALAZAR: May I inquire further?

23 CHAIRPERSON PREZEAU: No.

24 Janet.

25 BOARD MEMBER LEWIS: My thoughts are that that

1 discovery rule should apply to all of the citations issued
2 at the job sites that were considered in this decision.

3 And I am ready to make a motion to that effect.

4 CHAIRPERSON PREZEAU: Okay. Are there any other
5 comments by the Board?

6 Before we make the motion, Mr. Salazar, I would like
7 to give you -- I just wanted to give an opportunity -- I
8 didn't want to be rude, but I wanted to give the Board an
9 opportunity to have that conversation before I allowed you
10 more comments. But please.

11 MR. SALAZAR: I just -- I didn't think the judge made
12 a finding as to when the statute applied. I think he by
13 the ruling itself, 6.2 -- (inaudible) -- the dates that
14 the permits were pulled rather than 2012, at least I don't
15 see a finding or a conclusion that he made a determination
16 that the discovery rule was extended from a later date
17 other than the pulling of the citation -- or pulling of
18 the permit, which would have been April 29th at the very
19 latest, April 29, 2013.

20 CHAIRPERSON PREZEAU: Yeah, that's what -- I'm
21 reading from -- so I appreciate your question,
22 Mr. Salazar. I'm reading from Mr. Krabill's Conclusions
23 of Law, Conclusions of Law 5.3. It says, "The Supreme
24 Court of Washington interpreted this very statute in U.S.
25 Oil & Refining Company (versus) Department of Ecology

1 No subsequent legislation or precedential decision has
2 overturned U.S. Oil. In U.S. Oil, the Supreme Court
3 applied RCW 4.16.100(2) to State agencies. However, it
4 establishes a discovery rule that tolls the running of the
5 limitation period until the State," quote/unquote, "'using
6 reasonable diligence,' would have discovered the cause of
7 action ... Therefore, the discovery rule applies in this
8 case."

9 I am going back to 4.6, Notice to the Department. It
10 reads in part -- I'll just read the whole thing. "As Mr.
11 Burris admitted in a statement against interest and denied
12 in a subsequent declaration submitted in this matter,
13 Legacy Telecommunications, Inc. employees Lee Slowey and
14 Michael Baum actually performed some of the electrical
15 work at each of the four penalized jobs. Inspector
16 Statement, Exhibit 3 to the Declaration of Robert Matson;
17 see also Declaration of Stephen Burris. Mr. Slowey and
18 Mr. Baum first reported alleged misconduct at
19 Legacy/Burris Electric jobs on or about March 26, 2012."

20 I can only assume that in the actions taken by Judge
21 Krabill that he is using that date as applying the
22 discovery rule, and that it is only where he voluntarily
23 admits, again, on page 180 of our handbooks which
24 corresponds to page 10 of the March 28, 2014, transcripts,
25 "I interpreted the permit information provided with

1 Mr. Burriss' declaration the best I could. And as I
2 indicated, it is possible that with more information I
3 could have interpreted it better or differently, more like
4 Mr. Burriss, a professional electrician, might have."

5 ASSISTANT ATTORNEY GENERAL GREER: May I make a
6 comment?

7 CHAIRPERSON PREZEAU: I just want -- I'm going to
8 further read. "But my interpretation was the inspections
9 done on sites 2 and 3 were only the final inspections, not
10 the progress inspections where, as I ruled yesterday, it
11 will be more likely, and therefore I think we do get to
12 the should-have-known standard that the Department" --
13 there's an inaudible portion -- "inquiry, who is doing
14 this work."

15 Ms. Greer.

16 ASSISTANT ATTORNEY GENERAL GREER: In conclusion of
17 law 5.5 which starts on the bottom of hand-written page 44
18 and it goes to the top of 45, Judge Krabill specifically
19 stated, "Therefore, the discovery rule in U.S. Oil tolls
20 RCW 4.16.100(2) until Mr. Slowey put the Department on
21 notice March 26, 2012."

22 CHAIRPERSON PREZEAU: Thank you. That's actually --
23 so we don't have to assume through language what Mr. --
24 what was rolling around in Judge Krabill's mind, is that
25 he does clearly indicate that the Department was on notice

1 -- knew or should have known. He's applying the discovery
2 rule beginning March 26, 2012.

3 So Janet, you indicated that you have some
4 willingness to craft a motion in this matter?

5

6 Motion

7

8 BOARD MEMBER LEWIS: That's correct.

9 I would like to go back to Findings of Fact 4.9. My
10 motion proposes to modify Finding of Fact 4.9 in this
11 manner: The second sentence starting with "At the first
12 inspection where the Department found deficiencies, the
13 Department had reason" -- I propose to strike the words
14 "had reason" and replace it with "did not have reason" --
15 "to talk to the electrician who performed the work."

16 This is a two-part motion because it involves the
17 same finding of fact.

18 The last sentence in 4.9, insert the word "no" after
19 "Therefore, the Department had no reason to know that
20 Burris Electric electricians did not perform all of the
21 electrical work."

22 CHAIRPERSON PREZEAU: Okay, so your motion is to
23 amend -- modify Finding of Fact 4.9 to read as follows:
24 "At the Concrete job where one violation allegedly
25 occurred, the Department performed an interim inspection

1 on December 8, 2010, and a final electrical inspection on
2 December 15, 2010. Declaration of Stephen Burris. At the
3 first inspection where the Department found deficiencies,
4 the Department did not have reason to talk to the
5 electrician who performed the work. Therefore, the
6 Department have no reason to know that Burris Electric
7 electricians did not perform all ... electrical work." Is
8 that your ...

9 BOARD MEMBER LEWIS: That's correct.

10 CHAIRPERSON PREZEAU: Is there a second?

11 BOARD MEMBER NORD: I'll second that.

12 CHAIRPERSON PREZEAU: We have a motion and second.

13 Discussion on the motion?

14 I have one thought. I would like the maker of the
15 motion to consider a friendly amendment. And I would like
16 you to consider "may not have had reason." We don't know
17 if they spoke to the electricians or not. But I --

18 BOARD MEMBER LEWIS: I'll accept that.

19 CHAIRPERSON PREZEAU: But I certainly agree with the
20 intent of the motion. But what do you think about that,
21 Janet?

22 BOARD MEMBER LEWIS: I can agree to modify my motion.

23 CHAIRPERSON PREZEAU: So now it says "... the
24 Department may not have had reason to talk to the
25 electricians who performed the work. Therefore, the

1 Department had no reason to know that Burriss Electric
2 electricians did not perform all the electrical work."

3 Does the second, are you all right with that
4 modification?

5 BOARD MEMBER NORD: I'll concur with that.

6 CHAIRPERSON PREZEAU: Any discussion on the motion?

7 Seeing none, I am going to ask for all those in favor
8 with the motion to signify by raising their hands. I want
9 a count.

10 (Board Members Lewis, Cornwall, Phillips, Prezeau,
11 Nord, Cunningham, Townsend raised hands.)

12 One, two, three, four, five, six, seven. Thank you.

13 All those opposed, signify by raising your hand.

14 Motion carries. Thank you.

15

16 Motion Carried

17

18 CHAIRPERSON PREZEAU: Janet.

19

20 Motion

21

22 BOARD MEMBER LEWIS: I would like to make another
23 motion to modify Finding of Fact 4.10 beginning in the
24 second sentence. "At the first inspection where the
25 Department found deficiencies, the Department 'may not

1 have had reason'" -- insert that phrase, and strike "had
2 reason."

3 The last sentence in 4.10 to insert the word "no"
4 after "Therefore, the Department had 'no' reason to know
5"

6 CHAIRPERSON PREZEAU: Is there a second on the
7 motion?

8 BOARD MEMBER NORD: I'll second it.

9 CHAIRPERSON PREZEAU: So motion and second. So now,
10 the motion before us is -- Finding of Fact 4.10 now reads:
11 "At the Hoquiam job where one violation allegedly
12 occurred, the Department performed an interim inspection
13 on December 20, 2010, and a final electrical inspection on
14 January 20, 2011. Declaration of Stephen Burris. At the
15 first inspection where the Department found deficiencies,
16 the Department may not have had reason to talk to the
17 electrician who performed the work. Therefore, the
18 Department had no reason to know that Burris Electric
19 electricians did not perform all the electrical work."

20 Discussion on the motion? Seeing none, all those in
21 favor, again, signify by raising your hands.

22 (Board Members Lewis, Cornwall, Phillips, Prezeau,
23 Nord, Cunningham, Townsend raised hands.)

24 One, two, three, four, five, six, seven. That's
25 seven ayes.

1 All those opposed, signify by raising your hand. Let
2 the record reflect there were seven ayes and no nays.
3 Motion carries.

4

5 Motion Carried

6

7 CHAIRPERSON PREZEAU: The Chair would like the Board
8 to look at Conclusions of Law 5.4, and the Chair would
9 like to entertain a motion that is in the same spirit of
10 the two motions we just passed.

11 5.4 reads "Because an interim inspection should have
12 prompted a conversation or communication with the
13 electrician doing the work, the Department using
14 reasonable diligence, would have discovered that Burriss
15 Electric ... did not perform all of the electrical work at
16 those sites where it performed interim inspections on
17 different days from the final inspection. Therefore, the
18 discovery rule in U.S. Oil does not toll RCW 4.16.100(2)
19 for the Concrete or Hoquiam jobs. The two year limitation
20 period for both ran months before the Department served
21 Citations 04125 and 04126 on May 16, 2013. Therefore, the
22 Department is barred from pursuing those alleged
23 violations."

24 We'd be remiss if we didn't look at that.

25 BOARD MEMBER NORD: Madam Chair, I have a question.

1 CHAIRPERSON PREZEAU: Please.

2 BOARD MEMBER NORD: Do we have the ability to strike
3 5.4 in its entirety?

4 CHAIRPERSON PREZEAU: We do have the ability to
5 strike 5.4 in its entirety.

6

7 Motion

8

9 BOARD MEMBER NORD: May I propose a motion to do such
10 action.

11 CHAIRPERSON PREZEAU: Is there a second?

12 ASSISTANT ATTORNEY GENERAL REULAND: I would caution
13 that you do have to then make provision for what happens
14 to the citations in 5.4, either a new finding or in
15 addition to another finding.

16 BOARD MEMBER TOWNSEND: It removes the rationale.
17 You have to have a rationale in place.

18 ASSISTANT ATTORNEY GENERAL REULAND: You have to deal
19 with the citations --

20 BOARD MEMBER NORD: Somehow, yeah. I agree.

21 CHAIRPERSON PREZEAU: So the Chair would entertain a
22 motion that says something to the effect of "an interim
23 inspection does not" -- I am so -- well, I don't make
24 motions, but I would love to entertain a motion that 5.4
25 is modified to reflect -- striking "because" and reading

1 "An interim inspection does not necessarily prompt a
2 conversation or communication with the electrician doing
3 the work. The Department" -- hold on, just give me --

4 BOARD MEMBER NORD: It's very awkward.

5 BOARD MEMBER TOWNSEND: Madam Chair, I could try some
6 wordsmithing here if you'd like?

7 CHAIRPERSON PREZEAU: Okay, that would be great.

8 BORD MEMBER TOWNSEND: Strike "because" and say "An
9 interim inspection may have prompted conversation or
10 communication with the electrician doing the work. But
11 the Department, using reasonable diligence, may not have
12 discovered" da-da-da. I'm trying to --

13 CHAIRPERSON PREZEAU: Yeah, no. I -- so say that --
14 please give me that again, Dennis.

15 BOARD MEMBER TOWNSEND: Well, I haven't gone through
16 the rest, but --

17 CHAIRPERSON PREZEAU: Continue to go through the rest
18 of it.

19 BOARD MEMBER TOWNSEND: Well, I would strike
20 "because." Because is declared. I mean, it's like it
21 says. This happens all the time.

22 "An interim inspection may have prompted a
23 conversation or communication with the electrician doing
24 the work. But the Department, using reasonable diligence,
25 may not have discovered"

1 So in other words, what I'm trying to say is I
2 believe the intent of Janet's motion is --

3 CHAIRPERSON PREZEAU: Got it.

4 BOARD MEMBER TOWNSEND: -- that not every time are
5 you going to see an electrician. Not every time. Because
6 that makes a declarative statement like that has to happen
7 in that finding of fact.

8 BOARD MEMBER NORD: Madam Chair, may I offer ...

9 CHAIRPERSON PREZEAU: Oh, yeah. We're just
10 discussing. There's no motion before us.

11 BOARD MEMBER NORD: I believe that the sentence
12 "Therefore, the discovery rule in U.S. Oil does not toll
13 RCW 4.16.100(2) for the Concrete or Hoquiam jobs," we need
14 to strike that.

15 CHAIRPERSON PREZEAU: Yes. So here's what I -- so
16 here's --

17 BOARD MEMBER LEWIS: Madam Chair, maybe just strike
18 the word "not."

19 CHAIRPERSON PREZEAU: Here's what I would suggest we
20 consider: So this is a truly collaborative effort. So
21 what I would like the Board to consider is something like
22 the following: "An interim inspection may not necessarily
23 have prompted a conversation or communication with the
24 electrician doing the work. But the Department, using due
25 diligence, would not have discovered that Burris Electric,

1 LLC, did not perform all of the electrical work on those
2 sites where it performed interim inspections on different
3 days from the final inspection."

4 And then I would strike the balance of the conclusion
5 of law.

6 And I'm going to read from Conclusion of Law 5.5.

7 "Therefore the discovery rule in U.S. Oil tolls RCW
8 4.16.100(2) until Mr. Slowey put the Department on notice
9 March 26, 2012. Because the Department served Citations
10 04125 and 04126 within two years of March 26, 2012, RCW
11 4.16.100(2) does not bar it from pursuing the alleged
12 violations at the Bellevue" -- "at the" -- these are "the
13 Concrete and Hoquiam jobs."

14

15 Motion

16

17 BOARD MEMBER NORD: I would propose the motion as
18 read.

19 CHAIRPERSON PREZEAU: All right. So there's been a
20 motion -- the language just read by the Chair. Is there a
21 second?

22 BOARD MEMBER LEWIS: Second.

23 CHAIRPERSON PREZEAU: So a motion and seconded. And
24 for clarification, the motion is "An interim inspection
25 may not necessarily have prompted a conversation or

1 communication with the electrician doing the work. But
2 the Department using reasonable diligence would not have
3 discovered that Burris Electric, LLC, did not perform all
4 of the electrical work at those sites where it performed
5 interim inspections on different days from the final
6 inspection. Therefore, the discovery rule in U.S. Oil
7 tolls RCW 4.16.100(2) until Mr. Slowey put the Department
8 on notice March 26, 2012. Because the Department served
9 Citations 04125 and 04126 within two years of March 26,
10 2012, RCW 4.16.100(2) does not bar it from pursuing the
11 alleged violations at the Concrete and Hoquiam jobs."

12 Discussion on the motion? Seeing none, all those in
13 favor, signify by raising your hand.

14 (Board Members Lewis, Cornwall, Phillips, Prezeau,
15 Nord, Cunningham, Townsend raised hands.)

16 One, two, three, four, five, six, seven. Let the
17 record reflect seven ayes.

18 All those opposed, signify by raising your hand. Let
19 the record reflect no nays. The motion carries seven to
20 zero.

21
22 Motion Carried
23

24 CHAIRPERSON PREZEAU: Lastly, I believe we have one
25 more piece of work to do, and that is in the final order

1 6.1. The Chair would love to entertain a motion that
2 would be consistent with our other three -- our three
3 other actions.

4

5 Motion

6

7 BOARD MEMBER NORD: Madam Chair, I would propose the
8 following motion to read as follows: "The Department of
9 Labor and Industries Electrical Board is not barred from
10 pursuing alleged violations in Citations 04125 and 04126
11 at the Concrete and Hoquiam jobs."

12 CHAIRPERSON PREZEAU: Is there a second?

13 BOARD MEMBER LEWIS: Second.

14 BOARD MEMBER CORNWALL: Second.

15 CHAIRPERSON PREZEAU: Motion has been made and
16 seconded.

17 Again, for clarification, we're looking at --
18 Administrative Law Judge Krabill's order 6.1 now will be
19 modified to read: "The Department of Labor and Industries
20 Electrical Board is not barred from pursuing alleged
21 violations in Citations 04125 and 04126 at the Concrete
22 and Hoquiam jobs."

23 Discussion on the motion? Seeing none, all those in
24 favor signify by raising your hand.

25 (Board Members Lewis, Cornwall, Phillips, Prezeau,

1 Nord, Cunningham, Townsend raised hands.)

2 One, two, three, four, five, six, seven. Let the
3 record reflect there are seven ayes.

4 All those opposed, signify by raising your hand.
5 There are no nays. Let the record reflect the motion
6 passes seven to zero.

7

8 Motion Carried

9

10 CHAIRPERSON PREZEAU: Thank you.

11 So please be advised -- so Ms. Greer, do you have an
12 order with you today?

13 ASSISTANT ATTORNEY GENERAL GREER: I do not. I
14 apologize for that.

15 CHAIRPERSON PREZEAU: All right. So please be
16 advised that if you do not have an agreement or an order
17 reached, this matter will automatically be set for
18 presentment at the next regularly scheduled Board meeting.
19 If an agreed order has not been received by that date, the
20 parties will be expected to file their proposed orders and
21 appear and advise why their proposed order best reflects
22 the Board's decision. Hopefully this will not be
23 necessary. If you are able to reach agreement as to the
24 form of the order before the next meeting, please forward
25 it to the secretary of the Board, and they will ensure it

1 gets signed and copies provided to the parties.

2 Thank you very much.

3 BOARD MEMBER LEWIS: Madam Chair?

4 CHAIRPERSON PREZEAU: Janet.

5 BOARD MEMBER LEWIS: Do we need a formal motion to
6 affirm 6.1, 6.2 and 6.3, a formal Board motion to now
7 affirm the ALJ's order?

8 ASSISTANT ATTORNEY GENERAL REULAND: To affirm the
9 remaining, yes.

10

11 Motion

12

13 BOARD MEMBER LEWIS: I would like to make a motion to
14 affirm the ALJ's order 6.1 as modified, 6.2 and 6.3.

15 CHAIRPERSON PREZEAU: Is there a second?

16 BOARD MEMBER NORD: Second.

17 ASSISTANT ATTORNEY GENERAL REULAND: Could I just
18 clarify in terms of -- there's hearings and there's other
19 findings of fact which also should be dealt with. You can
20 certainly affirm the remaining findings and conclusions
21 and the order of the ALJ with the modifications that the
22 Board has made, but you have to do something with those
23 other findings of fact and conclusions of law.

24 CHAIRPERSON PREZEAU: So for clarification --

25 BOARD MEMBER TOWNSEND: Are we going to want to --

1 CHAIRPERSON PREZEAU: (To Ms. Reuland) You want us to
2 go one by one?

3 ASSISTANT ATTORNEY GENERAL REULAND: No. You can
4 affirm the ALJ's -- the remainder of the administrative
5 laws, proposed decision and order as modified previously
6 by the Board in 4.9, 4.10, Conclusion of Law 5.4 and the
7 Order 6.1.

8 CHAIRPERSON PREZEAU: So what I heard you just say is
9 that an appropriate motion to make before we dismiss the
10 parties would be something to the effect of affirming
11 administrative law judge's proposed decisions, Finding of
12 Facts including modified 4.9 and 4.10 and Conclusions of
13 Law including modified 5.4 and Initial Orders 6.1, 6.2,
14 6.3 including 6.1 as modified.

15 ASSISTANT ATTORNEY GENERAL REULAND: That would work.

16 CHAIRPERSON PREZEAU: Is somebody willing to make
17 that motion?

18

19 Motion

20

21 BOARD MEMBER LEWIS: I would make that motion.

22 CHAIRPERSON PREZEAU: So we have a motion. Do we
23 have a second?

24 BOARD MEMBER NORD: Second.

25 CHAIRPERSON PREZEAU: We have a motion and seconded,

1 which --

2 Milton, could you read that back to us please. Is
3 that possible?

4 THE COURT REPORTER: If I can find it. It might be
5 faster if you did it rather than me trying to find the
6 starting point of it.

7 CHAIRPERSON PREZEAU: So the motion is to affirm
8 Administrative Law Judge Krabill's proposed decisions,
9 decision and order, findings of fact -- all findings of
10 fact including those modified 4.9 and 4.10, all
11 conclusions of law including modified 5.4 and all proposed
12 orders 6.1, 6.2 and 6.3 including modified 6.1.

13 Discussion on the motion? Seeing none, all those in
14 favor of the motion, signify by raising your hand.

15 (Board Members Lewis, Cornwall, Phillips, Prezeau,
16 Nord, Cunningham, Townsend raised hands.)

17 One, two, three, four, five, six, seven. Let the
18 record reflect there are seven ayes.

19 All those opposed, signify by raising your hand.
20 There are no nays. The motion carries seven to zero.

21

22 Motion Carried

23

24 CHAIRPERSON PREZEAU: Have we finished -- have we
25 done our job completely, Pam?

1 ASSISTANT ATTORNEY GENERAL REULAND: Yes.

2 CHAIRPERSON PREZEAU: Okay. Thank you.

3 So again, if there's -- since there is no final order
4 here, I just want to say, again, if we don't have
5 agreement in the crafting of the final order, this matter
6 will be automatically set for presentment at the next
7 regularly scheduled Board meeting. If an agreed order has
8 not been received by that date, the parties will be
9 expected to file their proposed orders and appeal and
10 advise why their proposed order best reflects the Board's
11 decision. Hopefully this will not be necessary. If you
12 are able to reach agreement as to the form of the order
13 before the next meeting, please forward it to the
14 secretary to the Board's office, and they will ensure it
15 gets signed and copies provided to the parties.

16 Thank you very much.

17 ASSISTANT ATTORNEY GENERAL GREER: May I ask a
18 question? May I request a copy of the transcript to
19 assist in the preparation of the order?

20 CHAIRPERSON PREZEAU: The transcripts are a public
21 document. And they normally get posted on our Department
22 of Labor and Industries Web site. And so they're made
23 public. So both parties will certainly have access to the
24 entire Board transcript.

25 ASSISTANT ATTORNEY GENERAL GREER: Thank you.

1 CHAIRPERSON PREZEAU: Thank you.

2 So, boys and girls -- Dennis?

3 BOARD MEMBER TOWNSEND: I was just --

4 CHAIRPERSON PREZEAU: Yeah, no. I was just -- I
5 would very much like to take a break. And I'm sort of
6 glad that there's other folks that are willing.

7 We do have more business to conduct. What I would
8 like to do is come back at five minutes after 11:00. Is
9 that reasonable? Very good. We are in recess.

10

11 (Recess taken.)

12

13 CHAIRPERSON PREZEAU: All right. So it is now 8
14 minutes after 11:00, and I would like to bring the July
15 31, 2014, Electrical Board meeting back to order.

16

17 Item 3.f. Legacy Telecommunications, Inc.

18

19 CHAIRPERSON PREZEAU: And we are on agenda item 3.f.,
20 which is the Legacy Telecommunications, Inc., appeal. I
21 would ask that all respective related parties please come
22 up and join us at the tables -- chairs and tables up
23 front.

24 So again, good morning. My name is Tracy Prezeau. I
25 am the Chair of the Electrical Board. The matter before

1 us today is an appeal in the matter of Legacy
2 Telecommunications, Inc., versus the Department of Labor
3 and Industries, OAH docket number 2013-LI-0180. This
4 hearing is being held pursuant to due and proper notice to
5 all interested parties in Tumwater, Washington on July 31,
6 2014, at approximately 9 minutes after 11:00 a.m.

7 This is an appeal from a proposed decision and order
8 issued by the Office of Administrative Hearings on April
9 10, 2014. It is my understanding that that order granting
10 in part and denying in part the appellant's motion to
11 dismiss citation and notice numbers EMABQ04122,
12 EMABQ04123, EMABQ04124 issued by the Department of Labor
13 and Industries on May 16, 2013.

14 It is further my understanding that the appellant and
15 the Department has timely appealed the decision to the
16 Electrical Board.

17 And at this time I would ask that the parties
18 introduce themselves please.

19 MR. EHLKE: Good morning, Chairman Prezeau. My name
20 is Douglas Ehlke. I represent Legacy Telecommunications
21 in this matter.

22 CHAIRPERSON PREZEAU: Would you please spell your
23 name for our court reporter please.

24 MR. EHLKE: Sure. It's an old German name. It's
25 E-H-L-K-E.

1 CHAIRPERSON PREZEAU: Thank you.

2 And who is the gentleman to your right?

3 MR. TRACY: Jim Tracy -- James Tracy -- T-R-A-C-Y --
4 with Legacy Telecommunications.

5 CHAIRPERSON PREZEAU: Thank you.

6 ASSISTANT ATTORNEY GENERAL MADISON: Good morning,
7 Madam Chair, members of the Board. My name is Zebular
8 Madison. I'm an assistant attorney general, and I'm here
9 on behalf of the Department of Labor and Industries. My
10 name is spelled Z-E-B-U-L-A-R, last name Madison --
11 M-A-D-I-S-O-N.

12 CHAIRPERSON PREZEAU: So instead of me going through
13 my whole big script, were you both -- were all parties
14 present when I outlined the rules of engagement in the
15 previous matter?

16 MR. EHLKE: Yes.

17 ASSISTANT ATTORNEY GENERAL MADISON: Yes, Your Honor.

18 CHAIRPERSON PREZEAU: Okay. So what I would like to
19 do is basically remind the Board and the parties before us
20 that we -- just like that previous appeal, we are
21 constricted to information that is included in the record
22 of Legacy Telecommunications, Inc., versus Department of
23 Labor and Industries. We are not allowed to incorporate
24 any of the information from the Burris Electric matter.
25 We're not allowed to have that have an impact on our

1 decision. Nor do we have the ability to accept any new
2 testimony or new information that is not contained in our
3 appeal packet.

4 I would -- I'm just going to reiterate that each
5 party will be given approximately 15 minutes today to
6 argue the merits of your case. Board members can ask
7 questions, as you saw. They also interact with one
8 another. And certainly we want to make sure that we
9 create a good record.

10 So again, it's an interesting situation because both
11 parties in this matter, both the Department and the
12 appellant, are appealing the decision.

13 And again, I would like to ask Mr. Ehlke if he would
14 go first since you are the party making the motion for Mr.
15 -- for the ALJ's decision. So if there are no disputes in
16 that, again, I would ask that you present your case first
17 please, sir.

18 MR. EHLKE: Thank you, Your Honor.

19 Board members and counsel, I'd like to start on page
20 228 of the materials and 229. Why don't we start there.
21 Because that's where you need to start when you look at
22 what is the duty for inspectors when they go on these
23 periodic or interim inspections as they're called.

24 I have quoted in the RCW 19.28.101(1) on page 228 of
25 the appendix of your materials. The duty from the

1 director to enforcement personnel is to inspect all
2 wiring, equipment, materials at the job site when they go
3 out and do their inspections. And you know that, working
4 with the Department and with your own positions in the
5 profession. And then on page 229, every such job then has
6 to have that duty of compelling performance by law. And
7 the Department's inspector is to look at pertinent and
8 inspect things as the work is occurring defined as
9 progress inspections. That's an interesting term of art.
10 And the courts talk about that. Occurrence or occurring
11 means thing that happen. And in the Department's
12 experience in the WISHA side and in Federal OSHA side, you
13 have to have -- occurrence means it dates from the time of
14 the inspection. And it's a short statute of limitations
15 as it is here to find deficiencies. You all know it's 15
16 days as in the material. It's 15 days to correct
17 deficiencies. Stephen Burris described how that was done
18 in here.

19 The purpose is a short fix the work site up. Get the
20 equipment and the credentials checked into, and make sure
21 that everything is fine. Then you get the interim
22 progress reports, inspection reports at the job site.
23 That's why it's not like U.S. Oil.

24 U.S. Oil in my old medical malpractice cases where I
25 took cases where people had sponges left in them when

1 they're unconscious during the surgery, that's -- they
2 have no information the sponge was left in. U.S. Oil kept
3 everything to themselves of any spills. They didn't have
4 to self-report.

5 Your industry is regulated. Our industry is
6 regulated here. You have to self-report. You have to
7 give them a permit. You go on a list of the work sites.
8 And even have listed as Mr. Burriss' declaration, the first
9 one indicates, of the certifying list of electricians that
10 the Department has certified. So they have all that.

11 And that's important because RCW, the statute
12 19.28.331, page 229 shows all the compliance work must be
13 done as the facts are occurring.

14 So when you go out and visit sites inspectors, you
15 have to inspect for, quote, "to show the inspector, to
16 visually inspect the installation, to verify conformance
17 with the NEC and any other electrical requirements of this
18 chapter."

19 So that means you go out and as the judge said on
20 page 86 -- well, the first I do when we go out on these
21 inspections is I look at -- I'm glad to see a lot of you
22 are wearing these. The color electrician worker certified
23 at the job site. This is an attachment to
24 Mr. Burriss' supplemental declaration. I could pass it
25 around, but you all know this. You have -- now you have

1 to wear them on the outside of your clothing. You had to
2 have them on your person at the time of these inspections.

3 And Mr. Burris said that those were asked for.

4 Mr. Burris said that when they came out to do inspections.

5 And when you look at his declaration and you compare
6 it with the green electrician certified worker, in effect,
7 badge, or you call this a card, you find that not only
8 were they asked for, but during progress inspections, in
9 paragraph 17 and 15 of Mr. Burris' supplemental
10 declaration or regular declaration -- supplemental
11 declaration, it shows that -- he talks about the cover
12 inspections and the rough-in inspections. The cover
13 inspections occur as you all know when employees intend to
14 cover work including the wires going through and put
15 conduit -- in conduit or pipe. And rough-in inspections,
16 of course, are at the trench.

17 Well, when you look at that -- and Mr. Burris
18 explained that he's the only one in this case who was
19 there. The only one. So before you -- he's it. He's the
20 only one that was there at the site. So he was at all of
21 them.

22 So when he says in paragraph 8 of his supplemental
23 declaration that "We, the permittee," -- that's Burris
24 Electric as subcontractor or contractor for Legacy that
25 was doing the work, that is, Burris, they have to provide

1 and arrange for access to the inspectors to inspect the
2 work site. And during the many progress inspections, the
3 electricians and licensed contractor and administrator are
4 present. Are present. That's the facts you have to work
5 with. That's the facts here. Not assumed facts. Those
6 are the facts. They're undisputed.

7 And asked questions by the Department electrical
8 inspector about the installation. So when they have the
9 law requiring them to -- and you heard Ms. Greer say --
10 when they have the law that -- and we've talked about that
11 -- it shows that to extend the statute of limitations,
12 that's a fancy word for lawyer stuff. It just means a
13 fixed time, of course, when they have to do something.

14 The two-year statute's clearly exceeded. Because
15 April 29, 2011, is when all the final inspections plus the
16 multiple progress inspections where they have to check
17 which are occurring -- the work is occurring, meaning
18 occurrences, that's when the statutes start from.

19 How do we know that? Because you're trying to get to
20 the workplace and make sure that these electrical
21 important hookups are proper and done, that the work is
22 done properly. And these progress inspections, they're
23 going to see that. And they have a absolute right to ask
24 and talk to and find out. And they present their
25 credentials. And they ask for credentials.

1 So the -- when they come out and do the progress
2 inspections, that is the opportunity, the reason to know
3 the facts of who's doing the work and how the work was
4 done. When you have that opportunity, that's when the law
5 says the clock starts. And that's why the two-year
6 statute ran and expired. And there's been no basis to
7 extend it beyond that.

8 This isn't medical malpractice. This is where you're
9 asleep and can't -- don't know the facts. This isn't U.S.
10 Oil. And the Department knows that. Because in our -- in
11 the brief in our case, look what they said. There is --
12 it's in these materials. While there is no case on point
13 -- there is no case on point. That means U.S. Oil isn't
14 either. And if U.S. Oil doesn't apply because that's
15 where the only person who would know would be the person
16 who spilled, and they don't have to self-report. We do.

17 Everything in this industry is regulated from the
18 permit down through the progress inspections, the work in
19 progress that's occurring at the job site, at the work
20 site. Once that starts, you have opportunity and reason
21 to know that's all the law requires to say the clock is
22 ticking, the two-year clock, which they admit is the right
23 clock.

24 Department can schedule a progress inspection at any
25 time during the permit period. Even Burris says -- and

1 they have done that -- declaration -- supplemental
2 declaration, paragraph 10.

3 You can have unannounced compliance inspections
4 conducted by ECOPE, the enforcement arm for the Department
5 all during this period.

6 So when April 29, 2011, comes, and every one of these
7 job sites has been declared no deficiencies, everything's
8 in compliance, that includes the whole chapter. That
9 includes should have asked if anybody else -- if the
10 people doing the work in front of them -- because they
11 were -- aren't green badge/card certified electricians,
12 they would have a reason to know and ask.

13 And page 86, I urge you all to look at the transcript
14 where Judge Krabill says -- why don't we look at that.
15 Judge Krabill says, "My inference is me imagining myself
16 as an electrical inspector."

17 CHAIRPERSON PREZEAU: Wait a minute. Mr. Ehlke,
18 could you -- what line are you reading?

19 MR. EHLKE: It's lines 20 to 25.

20 CHAIRPERSON PREZEAU: Thank you.

21 MR. EHLKE: "My inference is me imagining myself as
22 an electrical inspector, going out (on) a site, work is in
23 progress, not done. I want to talk to the person who is
24 doing the work. I want them to tell me what I'm looking
25 at, where I am" That's exactly right. And there's

1 your duty. And there's your duty under the law. There's
2 the judge finding it. There is the -- the basis here is
3 they have to ask. And when they don't ask and then they
4 certify everything's in compliance, all complete, AC,
5 every permit we've given you -- and I've given you a list
6 of the progress -- multiple progress interim inspections
7 that took place on these jobs, there is clearly a
8 situation where the statute, agreed to be two years, has
9 run and expired.

10 You know, when you -- when you think about it, can an
11 ex-employee or a competitor or anyone make a complaint for
12 something where the purpose is to get every deficiency
13 corrected in 15 days?

14 Mr. Burris did that on behalf of -- and he says it --
15 and we show you the correct -- we show it in our materials
16 as well as -- he shows it in his declaration attachments.

17 When the purpose is that short to get the job -- to
18 get it done right and make sure everything's in
19 compliance, then it is not to have some kind of discovery
20 rule which allows a 20-year-later complaint about
21 something that happened and was perfectly certified in
22 full compliance 5, 10, 20 years ago. It's very clear that
23 that kind of a rule doesn't apply here where the State is
24 the inspector, goes out with -- walks on the ground, looks
25 over the work as it's being done multiple times. It is

1 never to enable decades, years of Monday morning
2 quarterbacking, thinking -- the purpose of the statute of
3 limitations, of course, is to shut off illegitimate claims
4 or claims that are stale or claims that are, you know --
5 when it should have been found and was known about and
6 could have been known about during the inspection. That's
7 the big difference here.

8 You've got inspectors doing the enforcement with the
9 short purpose get it all done and approved and the
10 questions of compliance being mandated in effect by the
11 law itself and the WAC.

12 I submit that as Mr. Burris says in his supplemental
13 declaration, you can have interim inspections -- the
14 practice has been that they also do interim or progress
15 inspections on the day they do the final inspection. And
16 that this industry, at least these projects, certainly
17 have some of that.

18 I submit progress inspections plus mandatory duty to
19 inquire gives opportunity and reason to inquire here, and
20 that Judge Krabill made the absolute right decision in
21 dismissing all of the items that had the progress interim
22 inspections, and many of -- several of them multiple
23 times.

24 But also I submit that the Board also dismiss those
25 inspections where the undisputed facts show you can have

1 interim inspections on the same day as the final
2 inspection declared everything complete.

3 Thank you for your time.

4 CHAIRPERSON PREZEAU: Thank you, Mr. Ehlke.

5 Mr. Tracy, do you have anything you would like to
6 add?

7 MR. TRACY: I -- thank you. I was going to not
8 because I am not a lawyer. I'm not familiar with all the
9 language. I'm a knuckle dragger, and I've been stacking
10 steel for a long time.

11 And I was excited to hear that you were excited to
12 hear this. But with all the legal speak, there is a part
13 that's gone awry. And it pertains to your question
14 (indicating).

15 Was there a scope of work?

16 Yes, sir.

17 Was there a contract?

18 Yes, sir.

19 Do I have his insurance certs?

20 Yes, sir.

21 Do I have a subcontractor agreement that makes him
22 abide by my safety rules?

23 Yes, sir.

24 CHAIRPERSON PREZEAU: So Mr. Tracy, I'm going to
25 caution you because, as I said, the rules of engagement

1 are no new information, no -- only -- and none of that is
2 in this record.

3 MR. TRACY: I believe it is in the record, ma'am.

4 And I further submit that it's in the record that
5 when he asked the question about scope of work for
6 Mr. Matson, I invited Mr. Matson to our office. And while
7 he offered to come to the electrician's office, he refused
8 to come to our office. And that's really important
9 because the scopes of work were at our office. And the
10 questions that he asked --

11 CHAIRPERSON PREZEAU: Mr. Tracy, is that -- my
12 attorney's getting concerned, and I think the reason she
13 is getting concerned is that we are beginning to get into
14 the merits of the case which is not what we're here to do.
15 Right? We are focused on -- and I should have -- and I'm
16 sorry; I should have said this in the rules of engagement
17 to remind everybody again what is before us is not the
18 merits of any of the citations; it is the matter of the
19 statute of limitations.

20 MR. TRACY: I guess then the last question that I
21 would have of this Board is this period of time is passed
22 when an ex-employee as found in the record and a current
23 competitor of mine as found in the record made a complaint
24 about my company and quite frankly my subcontractor. How
25 many years should I be worried about him coming back? How

1 many years should I save permits? Because you're
2 rewriting law now. You're giving a bureaucratic agency an
3 unlimited calendar when the legislature gave them a
4 limited one. I really think you're on dangerous ground.

5 CHAIRPERSON PREZEAU: Thank you.

6 Mr. Madison.

7 MR. EHLKE: Just for the record, could I -- Madam
8 Chairman, could I -- I just want to --

9 CHAIRPERSON PREZEAU: Well, here's what I'm going to
10 do, Mr. Ehlke, is technically you've exhausted your 15
11 minutes. I'm going to give Mr. Madison an opportunity.
12 And then we're -- as you saw in the previous, we're going
13 to go back and forth.

14 MR. EHLKE: That's fine.

15 CHAIRPERSON PREZEAU: But I want to be -- I want to
16 adhere to the rules that I laid out.

17 MR. EHLKE: That's fine.

18 ASSISTANT ATTORNEY GENERAL REULAND: Well, if it's
19 previously submitted, then the Board already has it. It's
20 in the record.

21 CHAIRPERSON PREZEAU: Let's go to Mr. Madison, and
22 then we'll come back to Mr. Ehlke.

23 ASSISTANT ATTORNEY GENERAL MADISON: Thank you, Madam
24 Chair, members of the Board.

25 I suspect that this Board is intimately familiar with

1 the record in this case. And I've gathered as much from
2 the comments previously.

3 However, at the risk of sounding redundant, I just
4 want to briefly cover what happened actually in this
5 particular matter with Legacy.

6 We have an allegation by the Department that between
7 the dates June of 2010 to December of 2011, Legacy was
8 engaged in work where Burriss Electric had pulled permits.
9 Employees from Legacy who were not licensed to do
10 electrical work were actually performing that type of
11 work. It wasn't until much later that that came to light.

12 In March of 2012, two former Legacy employees,
13 Mr. Slowey and Mr. Baum reached out to the Department.
14 They made a Department inspector aware that this was
15 occurring, that they were being asked to engage in this
16 type of work, that Legacy was not a licensed electrical
17 contractor, and that they were not being supervised when
18 they engaged in this type of work.

19 At that time in March of 2012 an investigation
20 ensued. It was first performed by Inspector -- Mr.
21 Manjares. Later about a year after that in March of 2013,
22 that investigation was taken over by Inspector Bob Matson.
23 Mr. Manjares had left State employment at that time, and
24 that's the reason for the change.

25 When Mr. Matson took up the investigation in early

1 2013, he then reached out to Mr. Baum and Mr. Slowey. He
2 met with them, inquired about the things that they were
3 alleging, began to develop his investigation further,
4 reviewed a number of documents. This was a very
5 document-intensive investigation. Mr. Matson underwent
6 that document review, reached out to Mr. Burris who owns
7 and operates Burris Electric and inquired about the things
8 that were being alleged. And at that point in time,
9 according to Mr. Matson, Mr. Burris, in fact, acknowledged
10 that these allegations had occurred. He has since changed
11 his statement, and I'll get to that in a bit.

12 But upon learning that, upon interviewing Mr. Slowey
13 and Mr. Baum, reviewing the records and ultimately
14 confirming those allegations with Mr. Burris, Inspector
15 Matson decided to issue a number of citations in this
16 matter. They total 14 in all. And they are for 14
17 different work sites for working without an electrical
18 license, failing to get a permit or request an inspection,
19 failing to provide supervision.

20 Those matters were appealed. And as the Board is
21 well aware, there's now a jurisdictional argument about
22 whether that exceeded the statute of limitations.

23 I think it's without dispute that a two-year statute
24 of limitations applies in these cases. I believe counsel
25 has submitted as much in his briefing. Certainly,

1 Administrative Law Judge Krabill agrees that a two-year
2 statute of limitations is appropriate. The Department's
3 in agreement with that as well.

4 As this Board is also aware, in the legal field and
5 as it pertains to statutes of limitation, there is what is
6 known as the discovery rule.

7 The discovery rule states that the statute of
8 limitations does not begin to run until a party either
9 knows or should have known that the activity leading up to
10 the allegations or that permits them to take action
11 becomes aware to them. Okay?

12 A lot of the cases that are referenced in counsel's
13 briefing as well as the briefing by the Department
14 referenced medical malpractice cases. There's a host of
15 others. But in a sense, they all stand for the same
16 proposition, and that is: a party that has recourse
17 against another party can't be expected to pursue that
18 recourse until they have knowledge that it exists. That's
19 what it stands for in a nutshell.

20 So in this case, it hinges on when did the Department
21 have knowledge that these violations had occurred?

22 There's a number of different dates with which one
23 could hang it on. Most probably, the March 26th of 2012
24 date when the two former Legacy employees make the
25 Department aware that this kind of activity had gone on.

1 In the Department's opinion, that is when the statute of
2 limitations begins to run. Okay?

3 There could be an argument that it wasn't until
4 Inspector Matson fully developed the investigation and had
5 sufficient reason to believe the allegations had occurred
6 that the statute begins to run at that point which is a
7 year later in March of 2013. Regardless of where you
8 believe that statute begins to run, the fact is these
9 citations were issued well within that parameter.

10 As I heard Madam Chair point out in the companion
11 case to this Burris Electric, even if you give the
12 Department the earliest possible date for when these
13 should have been known through reasonable diligence, that
14 would be March 26th of 2012. That still entitles the
15 Department to issue these citations up through March of
16 2014. So they were issued well within the parameters.

17 Judge Krabill after hearing the facts of this case
18 and reviewing the briefing submitted decided to do what we
19 refer to proverbially as split the baby. Coincidentally
20 there were 14 citations -- or 14 different instances for
21 these citations. He reviewed them and found that in seven
22 of those occurrences there were intermittent inspections,
23 progress inspections that took place while the job was
24 occurring. And the other seven, there were simply a final
25 inspection where the Department showed up and said, "Yes,

1 this meets our approval," and they stamped it work
2 complete.

3 In those situations where there were progress
4 inspections or some type of visit while work was
5 occurring, Judge Krabill says, "Well, the Department
6 should have known through reasonable diligence that this
7 type of activity was occurring." Because of his belief
8 that the Department was put on notice during those
9 progress inspections, he has now barred the Department
10 from pursuing those seven citations.

11 I would submit to this Board that that analysis is
12 flawed for a host of reasons.

13 Counsel pointed the Board to a portion of the record
14 where ALJ Krabill is expanding on why exactly he believes
15 the Department should have been on notice on page 86 of
16 the transcript. However, what counsel failed to do was
17 continue that analysis up through the next page on page
18 87. And if the Board were to do so, you would find that
19 Judge Krabill more or less suggests that he is not an
20 electrical inspector; he's never worked in the electrical
21 field. And what he says is -- he uses the word
22 "inference." He's making an inference as to what these
23 things may look like when the inspection occurs because he
24 has no working knowledge of what it actually looks like.

25 The first paragraph on line 2 of page 87, he says, "I

1 do understand a person may be out doing an inspection,
2 (and) that person is not available." And when he says
3 "that person," he's referring to the person who's actually
4 doing the work. If you remember counsel's argument, it
5 was even the judge acknowledges when you show up on the
6 site to make an inspection, you would inquire about who's
7 doing the work and whether they're properly licensed.
8 Well, as we know, that isn't always an opportunity that's
9 given to an inspector. Judge Krabill assumes that it is.
10 It's not. He says, I understand that person may not be
11 available. And this is a direct quote. "Look, he is out
12 to lunch, man. That doesn't necessarily make the
13 inspection invalid, but it would make it more difficult.
14 So my inference, without (the) help from expert testimony,
15 somebody telling me about how it really goes down, is if
16 there is a progress inspection, a person has the
17 opportunity, has the prop to talk to the person actually
18 doing the work."

19 So based on that statement, we understand that
20 Administrative Law Judge Krabill views these inspections
21 very differently than they typically occur in real life.
22 People doing the work aren't always available. And if you
23 have a scenario like the one we have here where it's being
24 alleged that Burris Electric and Legacy are engaged in
25 inappropriate activity, it stands to reason that they

1 would ensure that the people doing the work unlawfully
2 would not be on site when the inspector comes out to
3 conduct the inspection.

4 Counsel said that the inspector has a duty, and he
5 talked a lot about the duty that an inspector has when he
6 arrives on the scene or she arrives on the scene to make a
7 number of inquiries and get to the bottom of what may be
8 occurring at that job site. However, I would submit that
9 an electrical contractor has a number of duties as well.
10 One of those is to forthright with the inspector when the
11 inspector shows up and inquires about activity and who's
12 performing the work. And the other duty that they have is
13 to conduct their work within the parameters of the law.
14 You have an allegation here that that has not occurred.

15 Mr. Burris has already demonstrated to this Board
16 through the records submitted for your review that he's
17 somebody who's willing to change his story to protect his
18 own interest and interest of Legacy. Now, that's up for
19 debate, and that's something that will be flushed out when
20 the merits of this appeal are heard. However, for
21 purposes of today's hearing for purposes of looking at
22 when this jurisdictional time line begins to toll, I think
23 it's highly relevant for this Board to consider the fact
24 that when Mr. Matson called Mr. Burris, Mr. Burris
25 acknowledged that this activity was going on, that Legacy

1 employees were doing this work improperly. Citations were
2 issued. Mr. Burris retained counsel. And now we have a
3 statement that completely contradicts the information that
4 he gave to Mr. Matson. That's in his declaration. It was
5 already alluded to earlier in the companion case. The
6 Board is free to reference it. Mr. Matson's declaration
7 tells a wholly different story than the declaration that
8 was submitted by Mr. Burris. So with that in mind, I
9 would ask you even with the progress inspections that were
10 conducted during the course of these investigations, does
11 it stand to reason that this is information that would
12 have been made available to the inspector? It absolutely
13 does not.

14 Additionally, my last point is to find and to
15 subscribe to a theory that Judge Krabill puts forth in his
16 ruling is not only contrary to the law in these matters;
17 it promotes bad public policy.

18 Why do I say that? Because if you have folks that
19 are engaged in nefarious activity as the Department
20 believes Burris Electric was and as the Department
21 believes Legacy was, the message that this Board would
22 send them, the message that Judge Krabill would send them
23 is if you can engage in this activity and shield it for
24 the two-year statute of limitations, you're home free.
25 That's all you have to do. And that is not good public

1 policy. And I don't believe it's the intent of this
2 Board. And it certainly wasn't the intent of the
3 legislature in enacting the statute of limitations.

4 With that, I would ask that the Board issue a ruling
5 consistent with the Department's position in this case.
6 Specifically I'm asking that the Board reverse Findings of
7 Fact 4.12, 4.13, 4.14, 4.16, 4.17, 4.19, 4.22. I'm asking
8 that the Board reverse Conclusion of Law 5.4. And lastly,
9 I'm asking that the Board reverse Order 6.1.

10 Additionally, I'm asking that this Board affirm Judge
11 Krabill's ruling in all other respects. I'm asking that
12 the Board find the Department is not barred from pursuing
13 those seven citations that Judge Krabill dismissed, and
14 that those be reinstated in their entirety with the
15 accompanying monetary penalty.

16 With that, I thank the Board for their time, and I
17 will turn it back to you, Madam Chair. Thank you.

18 CHAIRPERSON PREZEAU: Okay. I know, Mr. Ehlke, you
19 wanted to say something else, which I will give you an
20 opportunity. But I would like to open it up and see if
21 the Board has any questions for any of the parties in
22 front of us.

23 Okay. So Mr. Ehlke, did you want to add something
24 else?

25 MR. EHLKE: Thank you very much.

1 We just heard that the opportunity to inquire on
2 those permit inspections. And the law requires that
3 compliance questions have to be made, and that would
4 include of the credentials of the people doing the work.
5 And what hasn't changed, what is still undisputed facts
6 here, is paragraph 8 of Mr. Burris' second -- or
7 supplemental declaration where he attached the badges and
8 -- that we pointed out before which were -- had to be on
9 the person from page 213 of the materials in this case of
10 the Board. And in that paragraph 8, the undisputed fact
11 is electricians -- licensed contractor administrator are
12 present and asked questions about the compliance of that
13 work.

14 CHAIRPERSON PREZEAU: Mr. Ehlke, I'm sorry, but what
15 page are you reading from?

16 MR. EHLKE: That would be page 204.

17 CHAIRPERSON PREZEAU: 204 of the hand printed?

18 MR. EHLKE: Yes.

19 CHAIRPERSON PREZEAU: Okay, I got it. Thank you.

20 So he's reading from line 16.

21 MR. EHLKE: Yes, ma'am.

22 It's a permit, short-purpose, compliance-time-frame,
23 occurrence-based law. And I've cited the authority, page
24 228 in my brief. But the -- in the materials.

25 They don't apply the discovery rule when you have an

1 occurrence, it-happened, it-was-a-inspected-type-of-
2 regulation-citations-penalties type law.

3 Thank you.

4 CHAIRPERSON PREZEAU: Mr. Tracy.

5 MR. TRACY: Again, I'm not a lawyer. But I can tell
6 you, the word "nefarious" he used, it didn't sound good.
7 And he used it to a guy who's worked for me for over ten
8 years. And on every site that he went on, he pulled a
9 permit. And he pulled a permit because his contractor --
10 his general contractor -- licensed, bonded, insured
11 general contractor asked him to. For ten years he's been
12 playing by the rules. And I would tell you from personal
13 experience, if you go in the record again, the record that
14 is written about my conversation with Bob Matson, that's
15 really not a good reflection of my conversation with Bob
16 Matson. And I can tell you that I talked with Steve as he
17 was walking out of Matson's office. And there's some
18 confusion here.

19 We're a telecommunications contractor. That's our
20 primary task. When my guys go out on a job site, on
21 telecom sites, they drive ground rods. I'm not afraid to
22 say that in here because it's legal. They lay conduit.
23 And they do it legally because they're on
24 telecommunication sites. 85 percent of his business with
25 me happens with my guys running conduit, my guys driving

1 ground rods.

2 He has no right -- you have not earned the right to
3 call him nefarious. He's a gentleman, and I'll stand by
4 him any day.

5 CHAIRPERSON PREZEAU: Very good, Mr. Tracy. I think
6 we understand your point. I really don't want things to
7 get too excited. But I understand when -- let's just
8 leave it at that if we can.

9 MR. TRACY: Our reputation is of supreme importance
10 to us.

11 CHAIRPERSON PREZEAU: I understand that, sir.

12 MR. TRACY: That's why I --

13 CHAIRPERSON PREZEAU: That's why I didn't interrupt
14 you earlier. Right? I understand that. I understand.

15 Any questions from the Board members?

16 So, you know, I will share with the Board my thoughts
17 if nobody minds.

18 I'm sure -- I like everybody here read the record. I
19 have not allowed the other Burris matter to influence or
20 in any way -- any of that information get in here.

21 From my position, it's interesting because it's the
22 exact same ALJ, Mr. Krabill, and from my perspective he
23 makes the exact same decision regarding -- so he's
24 consistent in his application of the discovery rule. And
25 he is consistent with what I would refer to as his

1 misapplication of interim inspections.

2 And I too was captivated by Mr. Krabill's comments on
3 page 87 -- handwritten page 87, page 40 of the 4/10/2014
4 transcripts where he says, "So my inference, without help
5 from expert testimony, somebody telling me about how it
6 really goes down, is if there is a progress inspection
7 ..." -- we already heard Mr. Madison read from this.

8 I believe from my perspective that Judge Krabill was
9 consistent in his application of the discovery rule
10 linking the March 26, 2012, date with a threshold of the
11 Department knew or should have known that the alleged
12 illegal activities were occurring, and then used the --
13 misused/misapplied the understanding of electrical
14 inspections and the Department's access to the job site as
15 being -- meaning they would have access to the workers.

16 I am not going to insult or say that Mr. Burris'
17 supplemental declaration is in error. I will not say
18 that. But I will say that my experience as a professional
19 industrial journal level electrician that I have never
20 once had an electrical administrator on the site when I
21 had an inspector to perform either an interim inspection
22 or a final inspection, never once in my tenure as a
23 journal level electrician and even as an apprentice
24 electrician.

25 As a journal level electrician, I routinely was the

1 only person on the job site to talk to the inspector. And
2 I have also called for inspection where no workers
3 including myself is on the job site, but access was
4 granted and made available in some cases through a
5 general contractor or another entity.

6 So I do not presume that because there were -- I
7 disagree with the ALJ in his presumption that because
8 there is interim -- merely because there's interim
9 inspections, there's an opportunity to talk to workers
10 performing the work, I don't believe that that is true.

11 And again, I want to remind the Board, all we are
12 doing is giving the opportunity for the merits of the case
13 for Mr. Tracy and Legacy Telecommunications to defend
14 their honor, if you will, in front of an ALJ on the matter
15 of the merits of all of the citations. We are not making
16 a decision based on the merits.

17 So with that, I would certainly love to hear from
18 some Board members where you guys -- what are you guys
19 thinking right now?

20 BOARD MEMBER CUNNINGHAM: I agree. I think --
21 especially if these are all residential sites. So I would
22 expect it to be relatively small projects -- (inaudible)
23 -- industrial or commercial background. Many, many
24 workers, multiple levels of supervision spanning out over
25 days or weeks or months, it's more likely that an

1 inspector would encounter a worker.

2 If we're talking about a generator on a residence,
3 we're talking a day? half a day? couple days? Likely
4 you're going to be there when those workers are there.

5 CHAIRPERSON PREZEAU: Yeah. I mean -- and the other
6 piece I know is that even if they are -- if the workers
7 are there, if they're not performing electrical work --
8 and this was -- these occurrences happened before the
9 legislation that compelled certified electricians, whether
10 they are a specialty electrician, whether they are a
11 journey level electrician, whether they are a trainee, to
12 visibly display their license. I helped pass that piece
13 of legislation, so I know it inside and out. But they --
14 so the only requirement was that they have their
15 certificate on their person. If they are not performing
16 any electrical work, they're sweeping the floor or loading
17 shovels into a truck, they're not doing electrical -- what
18 would be considered electrical work, the inspector may or
19 may not even know that they are actually workers who
20 performed the electrical installation, whether lawfully or
21 unlawfully.

22 Janet.

23 BOARD MEMBER LEWIS: But again, I think the Board
24 today, you know, it's a procedural question whether these
25 citations go forward.

1 No one here is questioning the integrity, you know,
2 of Mr. Tracy or the contractors or Mr. Burris. We're
3 questioning the assumptions this ALJ made. And, you
4 know, we're experts in the industry, and we don't believe
5 the ALJ knew -- in a sense, he made the right assumption
6 in terms of whether the citations should go forward or
7 whether an inspector should have known.

8 So I just wanted to make that clear to you,
9 Mr. Tracy, that, you know, I personally have not made any
10 assumption that you violated the law in any way. We're
11 only here to talk about these citations going forward on
12 the merits.

13 MR. TRACY: I thought we were here to talk about the
14 statute of limitations, though.

15 CHAIRPERSON PREZEAU: That is correct. And that's
16 what -- I think what Janet was alluding to is -- or is
17 trying to articulate and what I heard her say was we're
18 not making any decision on the merits of the citations
19 themselves and any of the -- so -- which you previously
20 stated is a reflection on your reputation and character --
21 could be. Could be.

22 We're not sitting in judgement of that. We're
23 sitting in judgement of the ALJ's decision, how he in this
24 case applied -- how he inferred, excuse me, what would
25 normally happen in the field when an inspection -- interim

1 inspection was happening or not happening.

2 So to that question, I am wondering if the Board is
3 willing to look at the order granting in part and denying
4 in part appellant's motion to dismiss. Are we ready to
5 move for that? Or do we need to have some more
6 conversation? Ready to move for that?

7 What I would like the Board to do is I think we need
8 to start on the first page of that order which is page 37.
9 And I certainly ask you to turn your attention to Order
10 Summary 2.1, 2.2 and 2.3.

11 ASSISTANT ATTORNEY GENERAL REULAND: I was just
12 advising the Chair that this is an order summary, and the
13 options before the Board would be to either amend the
14 order summary to correctly reflect the Board's decisions
15 in this matter. And you haven't voted on what that
16 decision is, but my suggestion would be that we come back
17 to the order summary, you can determine whether it can be
18 just be stricken entirely. It's a summary of the previous
19 orders of the orders that you're going to be making
20 subsequently. So that would be my suggestion.

21 CHAIRPERSON PREZEAU: Thank you, Pam. As usual,
22 always on point.

23 So in light of that advice, I would like to ask the
24 Board members to look -- begin the review of the --

25 MR. TRACY: Madam Chair?

1 CHAIRPERSON PREZEAU: Yes.

2 MR. TRACY: I have one question if I might. I asked
3 a previous question. And I don't know that I got an
4 answer.

5 If the statute of limitations runs two years, but the
6 discovery period has no calendar, how long should I retain
7 my permits by law now? I didn't get an answer to that
8 question.

9 CHAIRPERSON PREZEAU: I don't think that's a question
10 that I -- that this Board is prepared to answer.

11 Although, I think it's -- well, thank you.

12 So Findings of Fact, section 4. I ask you to turn
13 your attention to section 4.12. Section 4.12 reads: "At
14 the Concrete job where violation 3 allegedly occurred in
15 each of the three citations, the Department performed an
16 interim inspection on December 8, 2010, and a final ...
17 inspection on December 15, 2010. Declaration of Stephen
18 Burris. At the first inspection where the Department
19 found deficiencies, the Department had reason to talk to
20 the electrician who performed the work. Therefore, the
21 Department had reason to know that properly certified and
22 supervised Burris Electric electricians did not perform
23 all the electrical work."

24 Janet.

25

Motion

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3 BOARD MEMBER LEWIS: Madam Chair, I'd like to make a
4 motion to modify Finding of Fact 4.12. Starting with the
5 second sentence, I would like it to read, "At the first
6 inspection where the Department found deficiencies, the
7 Department may not have had reason to talk to the
8 electrician who performed the work."

9 The following sentence I would like to modify:
10 "Therefore, the Department had no reason to know that
11 properly certified and supervised Burriss Electric
12 electricians did not perform all the electrical work."

13 CHAIRPERSON PREZEAU: So a motion's been made. Is
14 there a second?

15 BOARD MEMBER NORD: Second.

16 CHAIRPERSON PREZEAU: There's a motion and second to
17 amend Findings of Fact 4.12, retain the first sentence in
18 its entirety, retain technically the second sentence which
19 is Declaration of Stephen Burriss. The third sentence, "At
20 the first inspection where the Department found
21 deficiencies," it will now read: "The Department may not
22 have had reason to talk to the electrician who performed
23 the work. Therefore, the Department had no reason to know
24 that properly certified and supervised Burriss Electric
25 electricians did not perform all the ... work."

1 Discussion on the motion? Seeing none, all those --

2 BOARD MEMBER CUNNINGHAM: Madam Chair?

3 CHAIRPERSON PREZEAU: Yes.

4 BOARD MEMBER CUNNINGHAM: I want to propose that that
5 third sentence after the comma after the word
6 "deficiencies" say "the Department may have had reason to
7 but did not necessarily talk to the electrician who
8 performed the work. Therefore, the Department had no
9 reason to know definitively whether properly certified and
10 supervised ... electrical ..." and so forth.

11 CHAIRPERSON PREZEAU: So you're asking --

12 BOARD MEMBER CUNNINGHAM: Because there were
13 deficiencies, there may have been a reason to talk to
14 them, but the person may not have been accessible to speak
15 with.

16 CHAIRPERSON PREZEAU: So if I heard you -- so
17 offering a friendly amendment to the motion maker.

18 BOARD MEMBER LEWIS: I do not accept that. I don't
19 know that there's anything in the record that would
20 support such an amendment.

21 CHAIRPERSON PREZEAU: So Dylan, just to sort of
22 create --

23 BOARD MEMBER CUNNINGHAM: I will withdraw my
24 suggestion.

25 CHAIRPERSON PREZEAU: Okay.

1 BOARD MEMBER TOWNSEND: I may make another, though,
2 and substitute the word "talk" with "notify."

3 CHAIRPERSON PREZEAU: Is that a friendly amendment?

4 BOARD MEMBER TOWNSEND: I'll offer it, yes.

5 CHAIRPERSON PREZEAU: So what you're saying is that
6 the sentence would now read: "The Department may not have
7 had reason to notify the electrician"?

8 BOARD MEMBER TOWNSEND: Yeah. My rationale is that
9 if on a deficiency it is identified on a permit as a
10 problem, it's usually written out what it is, whether it
11 is verbally communicated or written. I may be mistaken in
12 that assumption, but I'm thinking that that's part of the
13 process.

14 CHAIRPERSON PREZEAU: And so what I would offer,
15 again, is I think not to make things super convoluted, but
16 I think actually the way it reflects actually the motion
17 as it stands reflects that. Because it actually says "may
18 not have had reason to talk to the electrician." You're
19 still going to -- if the electrician that called for the
20 -- or whoever the entity is that called for inspection
21 isn't present, which is highly possible as Dylan pointed
22 out, since all of these projects are residential, there
23 are also gen sets that are most likely sitting outside --
24 the homeowner can grant access, and if there's corrections
25 that need to be written, they'd get written on the posted

1 work permit.

2 BOARD MEMBER TOWNSEND: Okay.

3 CHAIRPERSON PREZEAU: You all right with that?

4 BOARD MEMBER TOWNSEND: Understood. I'll withdraw
5 it.

6 CHAIRPERSON PREZEAU: Okay. Any other discussion on
7 the motion? Seeing none, all those in favor of the motion
8 signify by raising your hand please.

9 (Board Members Lewis, Cornwall, Phillips, Prezeau,
10 Nord, Cunningham, Townsend raised hands.)

11 One, two, three, four, five, six, seven. Let the
12 record reflect that seven ayes.

13 All those opposed, signify by raising your hand.
14 Motion carries seven to zero.

15

16 Motion Carried

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18 Motion

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20 BOARD MEMBER LEWIS: Madam Chair, I'd like to make
21 another motion for Finding of Fact 4.13. Starting at the
22 third sentence, I would like that to read: "At the first
23 and second inspections where the Department found
24 deficiencies, the Department may not have had reason to
25 talk to the electrician who performed the work."

1 Next sentence: "Therefore, the Department had no
2 reason to know that properly certified and supervised
3 Burris Electric electricians did not perform all of the
4 electrical work."

5 CHAIRPERSON PREZEAU: Okay. So motion's been made to
6 amend sentences three and four beginning "At the first and
7 second inspections where the Department found
8 deficiencies, the Department may not have had reason to
9 talk to the electrician who performed the work.
10 Therefore, the Department had no reason to know that
11 properly certified and supervised Burris Electric
12 electricians did not perform all the electrical work."

13 Is there a second?

14 BOARD MEMBER NORD: Second.

15 CHAIRPERSON PREZEAU: Motion has been made and
16 seconded. Any discussion on the motion? Seeing none, all
17 those in favor, signify by raising your hand.

18 (Board Members Lewis, Cornwall, Phillips, Prezeau,
19 Nord, Cunningham, Townsend raised hands.)

20 One, two, three, four, five, six, seven.

21 All those opposed, signify by raising your hand.

22 Motion carries seven ayes, no nays.

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Motion Carried

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Motion

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BOARD MEMBER LEWIS: Madam Chair, I would like to make a motion to modify Finding of Fact 4.14 beginning with the fourth sentence: "At the first and second inspections where the Department found deficiencies, the Department may not have had reason to talk to the electrician who performed the work."

Last sentence: "Therefore, the Department had no reason to know that properly certified and supervised Burris Electric electricians did not perform all of the work."

CHAIRPERSON PREZEAU: Very good. A motion has been made. Is there a second?

BOARD MEMBER NORD: Second.

CHAIRPERSON PREZEAU: Motion's been made and seconded.

Now, the record reflects 4.14: "At the first and second inspections where the Department found deficiencies, the Department may not have had reason to talk to the electrician who performed the work.

Therefore, the Department had no reason to know that properly certified and supervised Burris Electric electricians did not perform all the electrical work."

Discussion on the motion? Seeing none, all those in

1 favor, please signify by raising your hand.

2 (Board Members Lewis, Cornwall, Phillips, Prezeau,
3 Nord, Cunningham, Townsend raised hands.)

4 One, two, three, four, five, six, seven. Let the
5 record reflect that's seven ayes.

6 All those opposed, signify by raising your hand.

7 Motion carries seven ayes, no nays.

8

9 Motion Carried

10

11 BOARD MEMBER LEWIS: I have a question. Is it
12 possible to amend the other sections in the same manner
13 without going through each paragraph?

14 CHAIRPERSON PREZEAU: Pam?

15 ASSISTANT ATTORNEY GENERAL REULAND: I think you can
16 do that if you identify the paragraphs that have the
17 identical language so that it's just those -- so we're
18 talking the last four the Department had proposed I
19 believe.

20 BOARD MEMBER LEWIS: Yes.

21

22 Motion

23

24 BOARD MEMBER LEWIS: I would like to make a motion to
25 amend Finding of Fact 4.16, 4.17, 4.19, and 4.22 in the

1 exact same manner as previous the findings of facts were
2 amended.

3 CHAIRPERSON PREZEAU: So a motion's been made to
4 amend Findings of Fact 4.16, 4.17, 4.19, 4.22 so they all
5 read the following: "At the first and second inspections
6 where the Department found deficiencies" -- actually I
7 will strike that.

8 They will all read starting here: "The Department
9 may not have had reason to talk to the electrician who
10 performed the work. Therefore, the Department had no
11 reason to know that properly certified and supervised
12 Burris Electric electricians did not perform all the
13 electrical work."

14 The reason why I did not include the beginning part
15 of that sentence is some of these inspection projects --
16 some of these projects have different numberings of
17 inspections. Right?

18 So motion's been made to amend 4.16, 4.17, 4.19 and
19 4.22 to reflect that edit. Is there a second to that
20 motion?

21 BOARD MEMBER NORD: Second.

22 CHAIRPERSON PREZEAU: Very good. Is there discussion
23 on the motion? Everybody understands the motion? All
24 right. All those in favor please signify by raising your
25 hand.

1 (Board Members Lewis, Cornwall, Phillips, Prezeau,
2 Nord, Cunningham, Townsend raised hands.)

3 One, two, three, four, five, six, seven. Let the
4 record reflect there's seven ayes.

5 Those opposed, signify by raising your hand. Motion
6 carries seven ayes, no nays.

7

8 Motion Carried

9

10 ASSISTANT ATTORNEY GENERAL REULAND: I have a
11 suggestion to the Board.

12 Perhaps Mr. Madison can speak on this issue. Because
13 consistent with what you've just now determined, the Board
14 does have to deal with Conclusions of Law 5.4 and 5.5.
15 That's sort of difficult in the way that these are set
16 out. And so I would suggest that the Board may want to
17 consider sort of striking Conclusion of Law 5.4 and
18 amending 5.5.

19 An amendment could include some language that would
20 be "Either a final nor interim inspection would
21 necessarily prompt a conversation or communication with an
22 electrician doing the work." And then "Therefore" -- and
23 then go to 5.5. So you could strike the first paragraph.
24 "Therefore, the Department using reasonable diligence
25 would not have" -- and then amending the end of 5.5 to

1 include for all violations outlined in the citations so
2 you don't have to go back through.

3 I don't know how you think about that. But it seems
4 simpler to just refer to it jointly as opposed to try to
5 amend each one of these to be consistent with your prior
6 findings.

7 I'm just throwing that out to save some time.

8 BOARD MEMBER LEWIS: Madam Chair?

9 CHAIRPERSON PREZEAU: Yes, Janet.

10 BOARD MEMBER LEWIS: There may be a way to modify
11 5.4, which I can maybe take a stab at possibly. Unless
12 you want --

13 CHAIRPERSON PREZEAU: Well, and I think -- I think
14 this might be easier. I think this -- because then we'd
15 also have to deal with 5. So I think we can do this in
16 one, which I'm assuming we're going to have to take this
17 first (indicating) and then amend this (indicating)?

18 ASSISTANT ATTORNEY GENERAL REULAND: I was just
19 making a suggestion how to do both at the same time.

20 CHAIRPERSON PREZEAU: Very good.

21 ASSISTANT ATTORNEY GENERAL REULAND: There's no
22 motion pending before the Board.

23 CHAIRPERSON PREZEAU: Okay. So based on counsel's
24 recommendation, the Chair would entertain a motion to
25 strike Conclusion of Law 5.4 and modify Conclusion of Law

1 5.5 to read: "Neither a final nor interim inspection
2 would necessarily prompt a conversation or communication
3 with the electrician or electricians doing the work. The
4 Department using reasonable diligence would not have
5 discovered that Burris Electric LLC did not perform all
6 the electrical work at those sites where it did not
7 perform the interim inspections." So it would only modify
8 the first -- strike the first part of the sentence and
9 substitute it.

10 And then if you look, the fifth line from the bottom
11 in 5.5, it would strike "for the Bellevue, Port Orchard,
12 Seabeck, Woodinville, Lake Tapps, first Gig Harbor, and
13 Puyallup jobs corresponding to" -- it would actually
14 strike that language, and it would read: "Therefore, the
15 discovery rule in U.S. Oil tolls RCW 4.16.100(2) until
16 Mr. Slowey put the Department on notice March 26, 2012.
17 Apply to all violations outlined in the citations."

18 "Because" -- and finishing with "Because the
19 Department served Citations 04122, 04123 and 04124 within
20 two years of March 26, 2012, RCW 4.16.100(2) does not bar
21 it from pursuing those alleged allegations (sic)."

22 The Chair would entertain that motion.

23

24

Motion

25

1 BOARD MEMBER NORD: Motion as stated.

2 CHAIRPERSON PREZEAU: So there's been a motion. Is
3 there a second?

4 BOARD MEMBER PHILLIPS: Second.

5 CHAIRPERSON PREZEAU: Motion and second. Discussion
6 on the motion? Is everybody clear on what the motion
7 does?

8 So it strikes Conclusion of Law 5.4 and modifies 5.5
9 to reflect the Board's intent of an impact of modifying
10 section 4.12, 4.13, 4.14, 4.16, 17, 19, and 22.

11 Discussion on the motion? Seeing none, all those in
12 favor, please signify by raising your hand.

13 (Board Members Lewis, Cornwall, Phillips, Prezeau,
14 Nord, Cunningham, Townsend raised hands.)

15 One, two, three, four, five, six, seven. That's
16 seven ayes.

17 Those opposed, signify by raising your hand. Seeing
18 none, motion passes seven yeas, zero nays.

19

20 Motion Carried

21

22 BOARD MEMBER NORD: Madam Chair, may I entertain
23 another motion?

24 CHAIRPERSON PREZEAU: Please. And speak up.

25

Motion

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BOARD MEMBER NORD: In reference to "It is Hereby Ordered That: 6.1, The Department of Labor & Industries, Electrical Board is barred from pursuing alleged violations in Citations 04125 and 04126 at the Concrete and Hoquiam jobs," that the Board insert the word "Electrical Board is not barred from pursuing alleged violations." Strike "Electrical Board."

CHAIRPERSON PREZEAU: It says it right here.

BOARD MEMBER NORD: It should be "The Department of Labor & Industries is not barred from pursuing alleged violations in Citations 04125 and 04126 at the Concrete and Hoquiam jobs."

CHAIRPERSON PREZEAU: No, no, no, no. The reason why I'm -- Mr. Krabill's -- the judge's 6.1, 6.2 and 6.3 is the exact same as it exists in the Burriss matter. It does not reflect accurately what he has actually done in his order with job sites for Bellevue, Port Orchard, Seabeck, Woodinville, Lake Tapps, first Gig Harbor and Puyallup jobs. This order is -- he's crafted it incorrectly.

ASSISTANT ATTORNEY GENERAL REULAND: So do we have the correct last page of the Legacy order? It appears that the last page of the proposed decision and order in the pamphlet is from the Burriss decision, not from the

1 Legacy decision.

2 MR. EHLKE: I think it's a different one.

3 ASSISTANT ATTORNEY GENERAL REULAND: What?

4 MR. EHLKE: It's probably a different one.

5 CHAIRPERSON PREZEAU: Do you have the same one? Oh,
6 you don't know because you don't have the other packet.
7 I'm sorry.

8 MR. TRACY: And my attorney has cautioned me to be
9 quiet, but I don't listen to him anyway. But I would just
10 say that that's not the first mistake the State's made.

11 ASSISTANT ATTORNEY GENERAL REULAND: Do we have -- do
12 you have the PD & O?

13 ASSISTANT ATTORNEY GENERAL MADISON: Yeah. Madam
14 Chair, I have the order that was originally issued to my
15 office absent the packet that was put together by the
16 Board. It seems to indicate the same thing in the order
17 portion. And I'm happy to give that to you. So --

18 CHAIRPERSON PREZEAU: It indicates that it is
19 reflecting the job sites identified in the Burris
20 matter?

21 ASSISTANT ATTORNEY GENERAL MADISON: Correct.

22 BOARD MEMBER LEWIS: Madam Chair, how does that
23 relate to section 2, the order summary, where he does
24 refer to the correct citations?

25 CHAIRPERSON PREZEAU: Yeah, no, I think you're -- I

1 think -- that's a very valid -- is that Mr. -- Judge
2 Krabill does correctly enumerate the applicable job sites
3 in his Conclusions of Law 5.5. So we have the ability to
4 correct it. And bear with me for one moment.

5 BOARD MEMBER NORD: We should just strike that one.
6 Madam Chair, may I propose a --

7 CHAIRPERSON PREZEAU: Well, we've got no -- I don't
8 think we got a second on your first motion. So if you
9 want to --

10 BOARD MEMBER NORD: I want to re --

11 CHAIRPERSON PREZEAU: Recraft?

12 BOARD MEMBER NORD: -- recraft it. I'd like to
13 strike 6.1 in its entirety.

14 CHAIRPERSON PREZEAU: Okay.

15 BOARD MEMBER NORD: And I would like to strike 6.2,
16 the reference to Bellevue, Port Orchard jobs. And we need
17 to clarify the citation numbers.

18 CHAIRPERSON PREZEAU: So your motion as I understand
19 it would be to strike order number 6.1, and have order
20 number 6.2 read the following: "The Department of Labor &
21 Industries" -- strike the words "Electrical Board" -- is
22 not barred from pursuing alleged violations in Citations
23 04122, 04123 and 04124 on all job sites."

24 BOARD MEMBER NORD: Yes.

25 CHAIRPERSON PREZEAU: Is that correct?

1 BOARD MEMBER NORD: Correct.

2 CHAIRPERSON PREZEAU: Is there a second?

3 BOARD MEMBER PHILLIPS: Second.

4 CHAIRPERSON PREZEAU: Motion and second. Any
5 discussion? Seeing none, all those in favor of the
6 motion, please raise your hand.

7 (Board Members Lewis, Cornwall, Phillips, Prezeau,
8 Nord, Cunningham, Townsend raised hands.)

9 One, two, three, four, five, six, seven. That's
10 seven ayes.

11 Opposed, signify by raising your hand. There are
12 none. So the motion carries seven ayes, no nays.

13

14 Motion Carried

15

16 Motion

17

18 BOARD MEMBER NORD: Okay. Madam Chair, may I
19 propose a motion?

20 Section 2, Order Summary, that section 2.1 reads as
21 follows: "Citation EMABQ04122 to Legacy
22 Telecommunications Incorporated should not be dismissed
23 under RCW 4.16.100(2) as to violations 3, 4, 5, 7, 8, 10
24 and 13 only."

25 Also, Order Summary 2.2, "Citation EMABQ04123 to

1 Legacy Telecommunications Inc. should not be dismissed
2 under RCW 4.16.100(2) as to violations 3, 4, 5, 7, 8, 10
3 and 13 only."

4 And 2.3, "Citation EMABQ04124 to Legacy
5 Telecommunications Inc. should not be dismissed under RCW
6 4.16.100(2) as to violations 3, 4, 5, 7, 8, 10 and 13
7 only."

8 CHAIRPERSON PREZEAU: So a motion's been made. Is
9 there a second?

10 BOARD MEMBER PHILLIPS: Second.

11 CHAIRPERSON PREZEAU: So motion and second.

12 I would like the maker of the motion to consider the
13 following: Instead of preserving -- only -- this order
14 summary only -- the way it's crafted, all you're doing is
15 dealing with violations 3, 4, 5, 7, 8, 10 and 13. I would
16 ask the maker of the motion to consider a friendly
17 amendment which is that all three, 2.1, 2.2, 2.3 would
18 read: "Citation" and then the respective citation number
19 "to Legacy Telecommunications Inc. should be upheld under
20 RCW 4.16.100(2) to all 14 violations."

21 BOARD MEMBER NORD: So moved.

22 CHAIRPERSON PREZEAU: You accept that friendly
23 amendment?

24 BOARD MEMBER NORD: I accept and I agree.

25 CHAIRPERSON PREZEAU: Does everybody understand the

1 motion now? The way it is crafted, it would deal with all
2 14 infractions and uphold all of them, tie the statute of
3 limitations and the application of the discovery rule to
4 all 14 violations.

5 Discussion on the motion? Seeing none, all those in
6 favor please signify by raising your hand.

7 (Board Members Lewis, Cornwall, Phillips, Prezeau,
8 Nord, Cunningham, Townsend raised hands.)

9 One, two, three, four, five, six, seven. Let the
10 record reflect that's seven ayes.

11 Opposed, signify by raising your hand. No nays.
12 Motion carries seven ayes, no nays.

13

14 Motion Carried

15

16 CHAIRPERSON PREZEAU: Pam, do we have any more work
17 to do here?

18 Oh. So now we would need -- the last thing that we
19 need to do is the Chair would certainly entertain a motion
20 to affirm in all other respects the issues, findings of
21 fact, conclusions of law by ALJ Krabill.

22

23 Motion

24

25 BOARD MEMBER NORD: So moved.

1 BOARD MEMBER TOWNSEND: Madam Chair?

2 CHAIRPERSON PREZEAU: Yes.

3 BOARD MEMBER TOWNSEND: Prior to doing that, I have a
4 question that might be just reconciliation of a typo.
5 Before we adopt that, I want to bring attention to 4.8
6 Findings of Fact.

7 I've been reading through this. Ever since we turned
8 to the year 2000 it's been kind of a blur on the years as
9 to which one is which. But I'm trying to reconcile the
10 chronology of that statement.

11 On page 245 it refers to Mr. Slowey -- Mr. Matson
12 contacted Mr. Slowey in 2013. The way it reads in 4.8 --
13 the way I read it is that he contacted him before even the
14 allegations were made in the findings of fact. It refers
15 to 2011.

16 CHAIRPERSON PREZEAU: So if I am understanding what
17 you're saying is --

18 BOARD MEMBER TOWNSEND: Unless I'm reading this
19 wrong, in 4.8 in the -- let me see. "Former Legacy
20 employees" da-da-da "on or about March 26, 2012.
21 Declaration of Robert Matson. The Department did not
22 follow up on their allegations for almost a year. On
23 March 19, 2011, Mr. Matson called Mr. Slowey."

24 Well, on 245 -- page 245 --

25 CHAIRPERSON PREZEAU: Got it. That year is 2013.

1 BOARD MEMBER TOWNSEND: 2013. So unless he had the
2 ability to go back in time, I --

3 CHAIRPERSON PREZEAU: Hottub time machine?

4 BOARD MEMBER TOWNSEND: Yeah, there you go.

5 So before we adopt in total, I just wanted to bring
6 that out.

7 CHAIRPERSON PREZEAU: So are you making that in the
8 form of a motion to correct --

9 BOARD MEMBER TOWNSEND: I'm not the sure the
10 mechanics for that. It seems to be a typographical error.
11 We could include in total the rest of the motion to
12 reflect that.

13 ASSISTANT ATTORNEY GENERAL REULAND: You could just
14 make a motion to correct the typographical error.

15 BOARD MEMBER TOWNSEND: Oh, okay. So moved then.

16 ASSISTANT ATTORNEY GENERAL REULAND: Make a separate
17 motion. I think procedurally you have a motion on the
18 table. Maybe we want to suspend that motion while we take
19 care of the other motion.

20 CHAIRPERSON PREZEAU: Yeah, I think we need to
21 suspend the -- call for the question on the motion that is
22 before us. As was well pointed out by Dennis, we need to
23 correct this typographical error.

24 So the Chair would entertain a motion in 4.8 to
25 correct Mr. Krabill's finding of fact to reflect -- the

1 sentence --

2 BOARD MEMBER TOWNSEND: It's the fifth sentence.

3 CHAIRPERSON PREZEAU: Is it the fifth -- yeah, you're
4 right. The fifth sentence, it would read: "On March 19,
5 2013, Mr. Matson called Mr. Slowey."

6 The Chair would entertain that motion.

7 MR. EHLKE: Madam Chair, I would object for the
8 purpose that for the statute of limitations error, that
9 factual base change without any facts? I don't see how
10 you can do that without any facts.

11 CHAIRPERSON PREZEAU: Well, sir, it is in the
12 transcript that that conversation did happen on March 19,
13 2013, and not in 2011, which is -- it would be --

14 Go ahead, Pam.

15 ASSISTANT ATTORNEY GENERAL REULAND: The entire
16 proposed decision and order is before the Board. If you
17 look at the statute, Mr. Ehlke, the Board has the ability
18 to amend any and all findings of fact in the proposed
19 decision regardless of whether the parties agree --
20 (inaudible).

21 MR. EHLKE: I don't see how you can make the
22 connection to that call. I don't believe you can.

23 CHAIRPERSON PREZEAU: So we have a motion.

24 BOARD MEMBER: Second.

25 CHAIRPERSON PREZEAU: We have a second.

1 Any discussion on the motion? Janet.

2 BOARD MEMBER LEWIS: I'd only like to bring the
3 Board's attention to page 245 where it states right there
4 that, line 16, "On or about March 19, 2013, Inspector
5 Matson called Mr. Slowey."

6 CHAIRPERSON PREZEAU: Thank you.

7 BOARD MEMBER TOWNSEND; That was the basis of my
8 motion.

9 CHAIRPERSON PREZEAU: That's the basis of your
10 motion.

11 So it's been moved and seconded to modify Findings of
12 Fact 4.18 (sic) to accurately reflect the record. We
13 believe that to be a typo.

14 Any other discussion on the motion? Seeing none, all
15 those in favor, signify by raising your hand.

16 (Board Members Lewis, Cornwall, Phillips, Prezeau,
17 Nord, Cunningham, Townsend raised hands.)

18 One, two, three, four, five, six, seven.

19 All those opposed, signify by raising your hand.

20 Motion carries, seven ayes, no nays.

21

22 Motion Carried

23

24 CHAIRPERSON PREZEAU: So now we're going to return to
25 the zipper motion which is to affirm in all other respects

1 Judge Krabill's issues, order summary, hearing, findings
2 of fact, conclusions of law and initial order.

3 We have that motion. We have that second.
4 Discussion on the motion? Seeing none, all those in
5 favor, signify by raising your hand.

6 (Board Members Lewis, Cornwall, Phillips, Prezeau,
7 Nord, Cunningham, Townsend raised hands.)

8 One, two, three, four, five, six, seven yeas.

9 All those opposed, signify by raising your hand.

10 Motion carries seven yeas, no nays.

11

12 Motion Carried

13

14 CHAIRPERSON PREZEAU: Okay. So the parties,
15 Mr. Ehlke, Mr. Tracy, but really Mr. Ehlke and
16 Mr. Madison, you heard me give direction to the previous
17 appellants. And I basically wanted to make sure that
18 people -- that both parties understand that if a final
19 order cannot be agreed upon by the parties, then it will
20 be -- presentment -- it will be placed on -- it will be
21 automatically set for presentment at the next regularly
22 scheduled Board meeting; we'll discuss it then.

23 Thank you very much. I appreciate your time and your
24 presence today.

25 MR. EHLKE: Thank you.

1 ASSISTANT ATTORNEY GENERAL MADISON: Thank you.

2 CHAIRPERSON PREZEAU: Okay. So here's the situation.
3 We have five agenda items left including the Secretary's
4 report, which will probably not be hugely lengthy. We do
5 have a certification report.

6

7 Item 6. Discussion Regarding Secretary's Role
8 in Determining Perfected Appeals

9

10 CHAIRPERSON PREZEAU: I am going to address agenda
11 item 6 because I think I can do so very quickly. I know
12 it is 12:30. I know people need food to stay alive.

13 But just an update. As you recall at the April
14 meeting, we discussed potentially amending the bylaws of
15 the -- the Board's bylaws to accurately reflect workload
16 and the secretary to the Board's role in determining
17 timeliness. And you did even receive in your Board
18 packets proposed amended language.

19 However, we are not going to vote on that proposed
20 amended language because here's the problem: If you look
21 at our amendments, existing language to amend the bylaws,
22 bylaws must be amended by a simple majority of the Board
23 provided the amendment has been read at the previous
24 meeting, which it was not, or mailed to the Board members
25 20 days prior to the meeting in which the voting will

1 occur. This amendment was mailed 17 days to you. So we
2 do not meet our bylaws. So I would ask that you hang onto
3 those, and we will vote on that -- bring that up at the
4 next Board meeting. Because to do so today we would be
5 remiss. So we're taking 6 off.

6 Given that, we have a Secretary's report,
7 certification, public comment, and the open-government
8 training. Elyssa, it's like 45 minutes long, right?

9 MS. ZYSKI: 47-ish.

10 CHAIRPERSON PREZEAU: 47?

11 So I would like to understand, do we need to have
12 lunch? Does the Board members -- do you guys want to have
13 some lunch? Or do you want to keep going? Raise your
14 hand if you want to have lunch. One, two -- raise your
15 hand if you want to keep going? One, two --

16 BOARD MEMBER: Let's take a short break.

17 BOARD MEMBER: Let's take a break.

18 CHAIRPERSON PREZEAU: Let's take a break? All right.
19 Let's take --

20 BOARD MEMBER PHILLIPS: Eat lunch and come back.

21 CHAIRPERSON PREZEAU: So we can eat in this room,
22 right?

23 SECRETARY VANCE: Absolutely.

24 CHAIRPERSON PREZEAU: So you can go upstairs, get
25 something to eat, and come back.

1 SECRETARY VANCE: Yep.

2 CHAIRPERSON PREZEAU: The cafeteria should be quick.
3 So come back at 10 minutes till. We'll shoot for 10
4 minutes. 5 minutes till?

5 SECRETARY VANCE: Yeah.

6 CHAIRPERSON PREZEAU: 5 minutes till. Great.

7

8 (Lunch recess.)

9

10 CHAIRPERSON PREZEAU: So it is 12:59, and I would
11 like to reconvene the July 31, 2014, Electrical Board
12 meeting.

13

14 Item 4. Secretary's Report

15

16 CHAIRPERSON PREZEAU: We are currently under agenda
17 item number 4, which is Secretary's Report. Mr. Vance.

18 SECRETARY VANCE: Secretary's Report. Just a recap
19 on the budget. The June fund balance was \$9,596,547. And
20 again, that number is not quite accurate because of the --
21 the year-end accounting has not been completed. The
22 budget presentation earlier gave numbers that weren't
23 reconciled yet with actual 2014 -- or excuse -- 2013
24 numbers.

25 So our average monthly expenditures were \$1.6

1 million. And the fund balance is projected to trend
2 downward to less than four months of operating cost by the
3 end of the biennium based on current housing projections.
4 And we covered that earlier also.

5 There was 36,329 permits purchased during the last
6 quarter. Of all permits purchased, 32,929 or 91 percent
7 were made on-line, which is a 2 percent increase from the
8 previous quarter. 95 percent of all contractor permits
9 were sold on-line, which is consistent with the previous
10 quarter.

11 Homeowner on-line sales increased by 3 percent to 56
12 percent. On-line inspection requests remain the same as
13 last quarter at 79 percent.

14 During the quarter, customers made 65 percent of all
15 electrical license renewals on-line, which is the same as
16 last quarter.

17 As far as our key performance measures, our
18 percentage of inspections performed within 48 hours is at
19 92.4 percent. Our goal is 94 percent. For the year, we
20 were at 90 percent. So what we've had since we've began
21 restoring electrical inspector positions is that we're
22 starting to trend upward toward meeting our goal of
23 response time of 94 percent.

24 The number of focus citations and warnings, that's
25 for contractor licensing, worker certification and no

1 permit, was 973. We exceeded our goal of 889.

2 Workload indicator for the inspectors for stops per
3 day --

4 CHAIRPERSON PREZEAU: So Larry, I'm sorry, but --

5 SECRETARY VANCE: Yes.

6 CHAIRPERSON PREZEAU: -- the smart aleck in me just
7 needs to point out in light of the material we just
8 finished. So you mean to tell me there's electricians and
9 contractors that break the law even though you have
10 inspections happening? And that happened 973 times in the
11 last quarter?

12 SECRETARY VANCE: That is correct.

13 CHAIRPERSON PREZEAU: Okay. I just wanted to say
14 that.

15 SECRETARY VANCE: That is correct.

16 Well, and I might also point out that on-line
17 inspection requests were 79 percent. So 79 percent of the
18 time we don't talk to anybody; it's done on-line.

19 CHAIRPERSON PREZEAU: When they call for inspection.

20 SECRETARY VANCE: When they call for inspection.

21 CHAIRPERSON PREZEAU: 79 percent of the time you call
22 for inspections through an on-line process; you don't even
23 interface with the inspector.

24 SECRETARY VANCE: That's correct.

25 Electrical disconnect corrections written last

1 quarter were 15,893.

2 The licensing process --

3 CHAIRPERSON PREZEAU: Which is a significant increase
4 actually. So last quarter it was 13,165. And the quarter
5 before that was 14,504.

6 SECRETARY VANCE: Yes. And that number will change
7 because we just went to the 2014 National Electric Code.

8 CHAIRPERSON PREZEAU: Oh, yeah. That's --

9 SECRETARY VANCE: And we've re-evaluated our scoring
10 of the corrections. And we look for that number to drop.
11 It will drop because we had -- we had some valuation in
12 there that wasn't probably reflective of the magnitude of
13 the correction.

14 So we look for that to drop and then stabilize at
15 some number.

16 Licensing processing turn around is 1.9 days. It's
17 almost -- we're changing our scorecard to reflect the
18 number of licenses or the percentage of licenses that take
19 more than one day.

20 CHAIRPERSON PREZEAU: That's probably a more valuable
21 piece, right?

22 SECRETARY VANCE: It is.

23 CHAIRPERSON PREZEAU: Having just renewed my 01
24 certificate, I think it took me 47 seconds, Elyssa,
25 on-line.

1 SECRETARY VANCE: Right, Right.

2 And turn around for the average plan review is 1.3
3 weeks, which is good. I mean, it's quite good.

4 As far as licensing, there were 5,500 -- excuse me --
5 5,955 electrical licenses processed last quarter.

6 The electrical licensing section has transformed
7 their work processes to better serve the customers.

8 What's happening is is that we're finally at a point
9 where we're catching up with technology. We're taking all
10 of the -- every electrician has a paper file. Every
11 contractor has a paper file. It's located in our file
12 room. Every time we have a customer on the phone, we have
13 to -- our licensing staff many times more often than not
14 has to leave their seat, go in the file room, climb up on
15 a ladder, find the file, come back. Occasionally, there's
16 that someone else has the file or --

17 CHAIRPERSON PREZEAU: I was just going to say, I
18 would imagine when you're dealing with -- certification
19 renewal can be problematic, --

20 SECRETARY VANCE: Yes.

21 CHAIRPERSON PREZEAU: -- that maybe somebody
22 already has the file pulled and on their desk someplace
23 else or --

24 SECRETARY VANCE: Right. It could be over in the
25 audit department. It could be in different areas.

1 So it's frustrating both for our customer service
2 staff and the customer. So now what we have is we have
3 integrated document management where when we get a
4 document, it goes through a scanning machine, it gets
5 destroyed, and the customer service staff is when there's
6 so many calls, they're looking at the record. It's going
7 to take about a year to complete the migration of all the
8 historical files. But what we're doing is taking all of
9 the incoming mail that we get -- that's affidavits,
10 applications, all kinds of different things -- and those
11 are immediately being scanned. And those are usually the
12 items that the customer service folks are dealing with.
13 People always want to know -- they don't care about what
14 happened five years ago. They care about what they just
15 sent in with this affidavit.

16 So that's a very exciting project. In fact, that
17 work group was recognized by the Director, Joel Sacks,
18 with a Golden Eraser award.

19 CHAIRPERSON PREZEAU: Really?

20 SECRETARY VANCE: Yes, absolutely.

21 They're meeting some of the Department goals by, you
22 know, bettering the customer experience. They're able to
23 provide instant customer service. And they're really
24 transforming the way they work.

25 One of the things that we've discovered through this

1 process is is that we're kind of our own worst enemy. We
2 have two systems. We have an internal system, and then we
3 have our on-line services.

4 You said, Tracy, that you had renewed on-line. Well,
5 we also allow people to request a form from us and renew
6 by mail. Well, they could renew on-line.

7 One of the things that our customer service staff use
8 in customer -- out in the customer service locations
9 around the state is someone will come in and they'll want
10 to renew their certificate, and they'll say, "Here. Fill
11 this out." Well, you know there's a very nice quick
12 system sitting there that they could just use.

13 CHAIRPERSON PREZEAU: And that's cheaper. That's
14 cheaper.

15 SECRETARY VANCE: But what happens is is that the
16 customer fills this out. The customer service person
17 enters the information. And there's -- that's a handoff
18 that can cause errors. No one's better at entering their
19 information than the individual.

20 But what happens then, of course, is is that that
21 form is now sent to us. We have to pay to have it scanned
22 when we could have just had it in the system. So what
23 we're looking at is things like electrical trainee
24 certificates, for instance. To become an electrical
25 trainee, is there really any reason to offer it any other

1 way than on-line? Because -- I mean, are we there yet?

2 And that's something that we're exploring.

3 I think that most electrical trainees would probably
4 have a Smartphone in their pocket or be standing next to
5 someone many occasions during the day that has a
6 Smartphone in their pocket. And on-line, you can --
7 there's two methods that are available. You can use
8 credit card or you can use a routing number off your
9 check. So the time -- yeah, the only way that -- we
10 haven't figured out a way to stuff cash in the phone yet,
11 but it's pretty close.

12 CHAIRPERSON PREZEAU: I think it's called bitcoins.
13 Isn't that what they're called?

14 SECRETARY VANCE: Yeah, yeah.

15 But -- so we're looking at ways to eliminate paper
16 coming at us that we have to pay to have to be digitalized
17 so that we can see it. Because we have these two systems.
18 How do we move these two systems together? So that's a
19 challenge for us in the future.

20 Are there any questions?

21 CHAIRPERSON PREZEAU: I'm assuming that you -- you
22 alluded to this in your financial report, but that the WAC
23 rules were -- the revised WAC's went into effect July --

24 SECRETARY VANCE: July 1, yes. And revised RCW and
25 revised WAC books are available in a hard copy.

1 CHAIRPERSON PREZEAU: I know you can download those
2 from the L & I Web site. Or you may have seen -- Elyssa
3 actually brought me by my request, which I appreciate
4 during the appeals, she brought me the newest versions. I
5 like paper. I'm curious if other Board members want
6 copies -- the most current copies. I know they cost
7 money, but is it possible for the Department to furnish
8 the newly adopted WAC and RCW in hard-copy form to Board
9 members that want them if they request them?

10 SECRETARY VANCE: Yes.

11 CHAIRPERSON PREZEAU: Great. So just a resource to
12 you guys.

13 Any -- okay. Are you done with your Secretary's
14 Report?

15 SECRETARY VANCE: I am done with my Secretary's
16 Report.

17 CHAIRPERSON PREZEAU: Any questions for Larry? Very
18 good.

19 So we're moving to Certification/CEU Quarterly
20 Report. Mr. Larry Vance.

21 SECRETARY VANCE: Okay.

22 CHAIRPERSON PREZEAU: You know what? Actually -- I'm
23 sorry. But the financial reports that you -- that are
24 provided to the Board members every time, --

25 SECRETARY VANCE: Yes.

1 CHAIRPERSON PREZEAU: I did have one question. And
2 that is: There seems to be -- it's not a huge -- all of
3 the -- you know, agency-wide obviously we are good in
4 terms of expenditures versus allotments. And all of the
5 regions and central office seems to do well. But the
6 admin SCS -- SCS IT, in the grand scheme of things, it's
7 not a huge amount of money, but there are always -- this
8 quarter -- last quarter I did look beyond that. There's
9 -- we miss -- we spend more than what we are given in that
10 area. Is there -- is that just going to be the way it is?
11 Is that an IT function mostly or --

12 SECRETARY VANCE: We've got some IT projects that are
13 going on that we have both -- I think \$192,000 that we're
14 spending on electronic plan review which is going to
15 transition our electronic plan review department from
16 paper to digital where engineers are now going to be able
17 to use an electronic media back and forth instead of
18 mailing the plans.

19 CHAIRPERSON PREZEAU: Wow, that sounds good.

20 SECRETARY VANCE: Yes.

21 That's well on its way.

22 The other project that we have is we spent \$50,000
23 for the IDM project.

24 So that's two expenditures that weren't necessarily
25 allotted for, but we do have the funds, and we're spending

1 them.

2 CHAIRPERSON PREZEAU: Very good. Thank you.

3

4 Item 5. Certification/CEU Quarterly Report

5

6 CHAIRPERSON PREZEAU: So Certification.

7 SECRETARY VANCE: We have the same report that we had
8 last meeting. It's a statistics summary by attempts. And
9 if you go to page 4, you'll see the exam results for
10 general electricians, for residential electricians. And
11 if you go down the attempt column to attempt number 1, you
12 can see that there was 351 passed. And this is talking
13 about the first-time pass rates. So 53 percent of the
14 time, they passed both sections of the open-book test. If
15 you look at the residential --

16 CHAIRPERSON PREZEAU: You know, it's -- I love this
17 breakdown. And I just want to point out, I find this
18 fascinating. Because if you look, somebody took the test
19 16 times, and they didn't pass it the 16th time, they
20 didn't pass it the 17th time, and it's one person. And
21 they didn't pass it the 18th time, and they didn't pass it
22 the 19th time, and they didn't pass it the 20th time.

23 SECRETARY VANCE: Right.

24 CHAIRPERSON PREZEAU: I just wanted to point that
25 out. I think that's interesting.

1 SECRETARY VANCE: Right.

2 We've worked with our testing provider, and we're not
3 going to have that any longer.

4 CHAIRPERSON PREZEAU: Not going to have what any --

5 SECRETARY VANCE: We're not going to have people
6 taking the test that many times.

7 CHAIRPERSON PREZEAU: Yeah. It seems difficult for
8 me to understand. You know, I guess at some levels I
9 think, you know, how can you bar them from taking it 125
10 times?

11 SECRETARY VANCE: It's actually in rule. What it is
12 is that you get an attempt, and then two weeks later you
13 get an attempt, and then two weeks later you get an
14 attempt, and then you have to wait.

15 CHAIRPERSON PREZEAU: How long?

16 SECRETARY VANCE: You have to wait I think it's six
17 or nine months. I'd have to pull the rule up.

18 CHAIRPERSON PREZEAU: Okay.

19 SECRETARY VANCE: But essentially what it is is that
20 it's an open-book test. There's three thousand some odd
21 questions. You're never going to get the same test again.
22 I mean, so people that are -- what they're doing is is
23 they're getting in the way of people that have prepared to
24 take the examination. So they become a scheduling burden.
25 That's one problem.

1 The other problem is is that what are they
2 accomplishing if they're not prepared? They're not
3 prepared. Most often these folks that are taking the test
4 that many times, they're just going to -- I don't know if
5 it's gambling or what they're trying to do, but they're --
6 they've got something. And it also costs -- it's quite a
7 financial burden also.

8 BOARD MEMBER TOWNSEND: How many questions are on the
9 test?

10 SECRETARY VANCE: Well, you've got 60 questions.

11 BOARD MEMBER TOWNSEND: Well, let's just do the math.
12 You got 60 questions. They're all random. If you take it
13 enough times, you might get all 3,000, right?

14 SECRETARY VANCE: You could.

15 CHAIRPERSON PREZEAU: Well -- and I -- I was going to
16 say, I saw that happen actually. When I took my -- when I
17 took my journeyman exam, it was not PSI. And the
18 questions were actually -- the code questions were in
19 chronological order. So the first question was in Article
20 100 and then --

21 SECRETARY VANCE: Yep. LaserGrade.

22 CHAIRPERSON PREZEAU: Yeah, LaserGrade.

23 And I watched two guys come in, and one of them --
24 and a much smaller bank of questions --

25 SECRETARY VANCE: Right.

1 CHAIRPERSON PREZEAU: The work that Doug Erickson did
2 to expand it.

3 And they basically wrote down as many -- you know,
4 authored -- because they hit the tap-out button before the
5 time was finished. They were I think there to record the
6 questions and leave.

7 SECRETARY VANCE: Right.

8 BOARD MEMBER TOWNSEND: And my point's made somewhat
9 in jest, but your point's well taken over the fact that,
10 yeah, they're standing in line in front of somebody else
11 that really could --

12 CHAIRPERSON PREZEAU: Well, and truth be told -- I
13 guess which is why the rule is crafted the way it is, and
14 if we're in violation of the rule, then shame on us,
15 right? And if you don't like the rule, then change the
16 rule.

17 BOARD MEMBER TOWNSEND: Right.

18 SECRETARY VANCE: And it does also help protect the
19 -- I mean, if you do have the ability for somebody to come
20 in 20 times, they can -- you know, these are heavily
21 proctored. And I feel quite confident in the exam
22 security. But still -- I mean, somebody with a half-
23 decent memory can go in and come back and --

24 CHAIRPERSON PREZEAU: Well, and to be fair, you know,
25 there are very, very, very good competent electricians who

1 are good mechanics who are not good test takers.

2 SECRETARY VANCE: Correct, yeah.

3 CHAIRPERSON PREZEAU: So taking a test is not
4 necessarily the only viable method to prove your worth as
5 a craftsperson.

6 SECRETARY VANCE: That's correct.

7 And, you know, it is very accessible. You get
8 multiple attempts. What we want is is that when someone
9 is not successful, it's actually time to do some
10 preparation.

11 And if they're able to just throw more money at it
12 and sit down in front of a computer again and hope to get
13 lucky, it's evident that it's not working.

14 BOARD MEMBER PHILLIPS: You know, I agree with what
15 you're saying, Tracy. But it's an open-book test. I'm
16 just saying.

17 CHAIRPERSON PREZEAU: I know.

18 BOARD MEMBER PHILLIPS: I'm just -- look
19 (demonstrating). Right?

20 CHAIRPERSON PREZEAU: Yup.

21 BOARD MEMBER PHILLIPS: Okay. Thank you.

22 CHAIRPERSON PREZEAU: Have you seen -- have you seen
23 since we've -- because I was a little bit surprised when I
24 reviewed this, especially the electrician exam, not so
25 much the administrator or master, but the pass rates are

1 -- are they trending down?

2 SECRETARY VANCE: No.

3 CHAIRPERSON PREZEAU: I just kind of for whatever
4 reason got horrified at a trend.

5 SECRETARY VANCE: Yeah.

6 If you look at both sections, it's somewhere in the
7 70 percentile range the first time they pass either one or
8 the other. But when you take them both sections together
9 on the journeyman's examination, it's 53 percent, meaning
10 that they're not prepared. They're not prepared.

11 CHAIRPERSON PREZEAU: For one or the other.

12 SECRETARY VANCE: For one or the other.

13 CHAIRPERSON PREZEAU: I mean, some of these like, you
14 know, the 06B first-time pass rate is 6 percent. I was --
15 you know, I mean -- 07A, none of -- well -- none of them
16 passed. Out of nine candidates, all of them failed the
17 first time.

18 SECRETARY VANCE: And those subspecialties where
19 they're -- many of them on a fast track, you know, 720 or
20 1,000 hours.

21 CHAIRPERSON PREZEAU: Maybe it's not enough.

22 SECRETARY VANCE: Or they're -- if you're someone
23 who's just performing lighting retrofit work, and the
24 focus is on performing the work and not really knowing why
25 you're performing the work or what code applies.

1 It's the same struggle with residential.

2 CHAIRPERSON PREZEAU: Yeah.

3 BOARD MEMBER NORD: Well, and you've got an 06 here
4 that's taken it 18 times and failed.

5 SECRETARY VANCE: Right, right.

6 CHAIRPERSON PREZEAU: Well, I just would like to
7 thank the Department and PSI for their willingness to
8 continue to put this together. This is way more value to
9 me and I hope the balance of the Board than the previous
10 version of the certification report.

11 SECRETARY VANCE: Yes.

12 I am still committed to produce a report on comparing
13 apprenticeship graduates to on-the-job electricians. I
14 still have that on my plate. I'm just currently wearing a
15 lot of hats.

16 CHAIRPERSON PREZEAU: Any questions for Larry on the
17 Certification -- oh, CEU's, did we talk about CEU's?

18 SECRETARY VANCE: CEU's, I don't have the exact
19 number of approved courses at this time. But we continue
20 to have a large influx of applications. We're not
21 experiencing anything that would indicate to us that
22 there's a shortage of training out there or a lack of
23 availability.

24 CHAIRPERSON PREZEAU: For both CEU's and the basic
25 classroom training requirement for trainees?

1 SECRETARY VANCE: Yes.

2 CHAIRPERSON PREZEAU: Very good. I'm happy to hear
3 that. Very, very happy to hear that.

4 All right. Questions/comments for Larry?

5 SECRETARY VANCE: I did want to touch on -- Rod Mutch
6 is over today talking with an engineer that's applied to
7 become another one of the engineering evaluators. So
8 these are engineers that evaluate industrial utilization
9 equipment, factory manufacturing type of equipment to see
10 if they meet appropriate safety standards. So it's likely
11 that that group is going to increase by one which will
12 give us five engineers. And this engineer happens to be
13 in Kennewick. We have both a west side presence and a
14 Eastern Washington presence. And Kennewick is actually
15 now closer to Walla Walla where a lot of the wine
16 equipment is. So it'll be helpful there.

17 One -- pardon me to just log on for a second. I
18 wanted to talk about the CE mark. If anyone turns their
19 phone over or looks at a piece of electronics, there's a
20 CE mark on there. Let me just log on here for a second.

21 In the European Union, the CE designation means that
22 -- what it is is it's a suppliers declaration of
23 conformity, which means "I built this and I declare that
24 it's safe." And in the United States the Department of
25 Labor does not recognize that. The reason they don't

1 recognize it is is it's because any follow-up testing is
2 done after the fact. That product can be manufactured,
3 distributed in the European Union.

4 And the European Union has petitioned the United
5 States, petitioned the Department of Labor for us to
6 accept the CE mark.

7 And what the CE mark is is it's a "trust me" mark.
8 It's a "trust me" designation.

9 In the United States, OSHA requires -- the Department
10 of Labor and OSHA require that any equipment that workers
11 are subjected to meet appropriate safety standards and be
12 proven to meet those safety standards by an accredited
13 national -- an NRTL, a nationally recognized testing
14 laboratory. And OSHA is the body that -- the Department
15 of Labor and OSHA are the body that certify those
16 laboratories.

17 So when you have a piece of equipment that comes from
18 Europe and it's got a CE mark on it, what the Department's
19 finding is is that we've got -- we've got folks out there
20 that -- manufacturers that purchase equipment. The only
21 mark on it's a CE mark. And we're asked and challenged as
22 to why we don't accept that.

23 Well, we don't accept that because the Department of
24 Labor and OSHA do not accept that. And it would not be a
25 position that the Department would take to go against

1 those bodies.

2 There's continued pressure, though, to recognize the
3 CE mark. But we'll write an Electrical Currents
4 newsletter article about it. We've written several. But
5 it's something that -- the CE mark is all over the place.
6 And it's not truly -- it's not a mark that distinguishes a
7 product as being safe. What it means is "Trust me; it's
8 safe." And some products have follow up done on them.
9 Some don't. But again, it's always going to have to --
10 it's always going to happen after the consumer has it in
11 their hand.

12 CHAIRPERSON PREZEAU: So it's sort of like U.S. Oil
13 saying, "We didn't spill oil in the Commencement Bay."

14 SECRETARY VANCE: Right.

15 CHAIRPERSON PREZEAU: "So we are forced to admit that
16 we spilled oil in Commencement Bay"?

17 SECRETARY VANCE: Yes. Like a General Motors
18 ignition switch.

19 BOARD MEMBER NORD: It's all good until you're
20 caught.

21 SECRETARY VANCE: It's all good until something
22 happens, yes.

23 So that's a little bit on the CE mark.

24 I have one other tidbit of history, speaking of this.
25 This is a report -- copy of a report that came to light.

1 An engineer asked the Department for information about the
2 National Electric Code and when it was adopted. And Trent
3 Harris who was a technical specialist at the time asked
4 the State Library for information. They sent over quite a
5 bit of information. And this is a report covering the
6 period from 1932 so 1936. And it's a report I think to
7 the legislature. So it's a report about the
8 administration of the electrical contractors licensing
9 law.

10 In 1935, House Bill 413, an act was passed relating
11 to and describing the manner of installation of electrical
12 wires and equipment, regulating sales thereof, providing
13 for the licensing and bonding of those engaged therein,
14 prescribing the powers and duties of certain officials in
15 connection therewith, providing penalties and making an
16 appropriation and repealing sections, yada-yada-yada-ya,
17 of Remington's Revised Statutes and Laws of 1919.

18 Under authority of Section 4 of this act, 515
19 electrical contractors were licensed in 1936, each which
20 operated under a thousand dollar surety bond.

21 CHAIRPERSON PREZEAU: That's a lot of dough.

22 SECRETARY VANCE: Well, in today's dollars, that's
23 \$17,000.

24 CHAIRPERSON PREZEAU: What's the bond threshold now?

25 SECRETARY VANCE: The bond threshold is \$4,000.

1 There was deposit into the electrical licensing fund
2 from this source \$35,160 from January 2, 1936, to December
3 31st of the same year.

4 The operation of this law has been a great benefit to
5 the legitimate contractors as well as those workmen
6 engaged in the electrical industry. Experience has shown
7 that there is a need for a sales control law because of
8 the fact that the inspectors are often confronted with
9 inadequate equipment sold in this state by foreign
10 manufacturers and others.

11 Eleven electrical inspectors are engaged by this
12 division to administer this law whose duty it is to
13 inspect wiring installations, appliances, devices and
14 equipment for the purposes of safeguarding life and
15 property.

16 Under Section 11 of this act, we have permitted
17 homeowners to do their own wiring, but it may be well to
18 point out that we have experienced some difficulty with
19 persons claiming to have done their own wiring, while in
20 truth, someone else is actually doing the work.

21 By affidavits sworn by the homeowners and with the
22 cooperation of various power companies who are requested
23 not to connect their lines unless such affidavit is
24 affixed, we have endeavored to correct this evil.

25 On a whole, this law has been a help to the

1 electrical industry throughout the state as well as to the
2 general public because of a higher class of work resulting
3 from standardization of the industry.

4 That's the end of the report. But that's from 1936.

5 CHAIRPERSON PREZEAU: He who does not understand
6 their history is doomed to repeat it.

7 What I think is interesting is the ratio of
8 inspectors to contractors. You said there was 515
9 contractors? So there's -- and there's 11 inspectors. So
10 it's roughly a 1 to 50 ratio of inspectors to contractors.
11 How many -- roughly how many field inspectors including
12 ECOPE do you have running around right now?

13 SECRETARY VANCE: Oh, including ECOPE it would be 116
14 to 5,000.

15 CHAIRPERSON PREZEAU: So we've kind of maintained
16 that ratio.

17 SECRETARY VANCE: Yeah.

18 CHAIRPERSON PREZEAU: Which is interesting.

19 SECRETARY VANCE: Yeah.

20 BOARD MEMBER NORD: Can you forward that to us,
21 Larry?

22 SECRETARY VANCE: Yeah. It's interesting. And it's
23 interesting about the sales control law.

24 CHAIRPERSON PREZEAU: Yeah. And it's shocking,
25 shocking, shocking to hear that in the '30s that there

1 were contractors that were playing fast and loose with the
2 rules. Shocking, shocking, shocking.

3 ASSISTANT ATTORNEY GENERAL REULAND: Human nature
4 just emerged.

5 CHAIRPERSON PREZEAU: No, human nature did not just
6 emerge.

7 Okay. So -- and we already -- thanks, Larry. I
8 would think everybody -- all the entire Board including
9 those who are not here would love to see that.

10 We dealt with the potential -- or agenda item 6,
11 which was maybe going to have us amend the bylaws.

12 You guys -- I just want to remind the Board, you have
13 that language. Please review it before the October
14 meeting. Because we will probably -- should we take
15 action, that will have bearing.

16

17 Item 7. Public Comment Regarding Items Not on the Agenda

18

19 CHAIRPERSON PREZEAU: Agenda item 7 is public comment
20 regarding items not on the agenda. I have pulled the
21 sign-in sheet, and the only people on it are Doug Ehlke
22 who signed in representing Legacy Electric for the appeal;
23 Zeb Madison from the Department of Labor and Industries,
24 again, with the appeal; and Jim Tracy of Legacy
25 Telecommunications, Inc., again, with the appeal.

1 Seeing how none of those folks are here, I'm assuming
2 that they -- their opportunity to speak has been -- they
3 exercised that.

4 Is there anybody else who would like to -- Larry, you
5 want to address the Board?

6 SECRETARY VANCE: I do not want to address the Board.
7 Just before the Board adjourns, I just have one quick --

8

9 Item 8. Open Government Training

10

11 CHAIRPERSON PREZEAU: Well, we're not going to
12 adjourn because we've got another agenda item.

13 SECRETARY VANCE: That's correct.

14 CHAIRPERSON PREZEAU: So we're not -- but I'm just --
15 I'm going in the order, right? Because we have Open
16 Government Training, which takes 47 minutes.

17 ASSISTANT ATTORNEY GENERAL REULAND: I guess I'm
18 going to raise a question for that.

19 CHAIRPERSON PREZEAU: Okay, Pam's raising a question.

20 ASSISTANT ATTORNEY GENERAL REULAND: One of the
21 reasons we had decided to do this for the Board was to
22 save everybody the time of doing it on-line. Half the
23 Board is here, which we didn't know was going to happen
24 when we set this up. So the other half would have to do
25 it on-line.

1 BOARD MEMBER: Or we could do it in October.

2 CHAIRPERSON PREZEAU: Well, there was some of us --

3 ASSISTANT ATTORNEY GENERAL REULAND: It has to be
4 completed by the end of this year.

5 CHAIRPERSON PREZEAU: Yeah, biennium. So that's the
6 reason why we even put it on the situation here is because
7 if we don't, we wanted to show good faith toward getting
8 as many people to watch it to comply with the statute.

9 To be honest with you, I know it's a pain. Yeah, I
10 could watch this on my own time. But this is a bit of a
11 -- what is the likelihood that I actually discipline
12 myself and we adjourn and not watch this, who's -- raise
13 your hand if you really think you're going to watch it on
14 your own time.

15 (Board Members Phillips and Brickey raised hands.)

16 ASSISTANT ATTORNEY GENERAL REULAND: And I'm only
17 going that we -- you don't want to set it twice because we
18 don't want --

19 BOARD MEMBER PHILLIPS: Well, I mean, it's part of
20 your job.

21 ASSISTANT ATTORNEY GENERAL REULAND: If we show it to
22 the other half, we'd have to watch it twice.

23 CHAIRPERSON PREZEAU: Well, so -- and I appreciate
24 what Alice just said. It's part of our job. And it is
25 part of our job.

1 But see, if we set it for the October meeting, then
2 we are not in compliance with the statute that said you
3 had to watch it by the end of July, right?

4 ASSISTANT ATTORNEY GENERAL REULAND: No. There's
5 some dispute about that.

6 CHAIRPERSON PREZEAU: Oh. Tell us about the dispute.

7 BOARD MEMBER PHILLIPS: I like disputes.

8 CHAIRPERSON PREZEAU: Tell us about -- So Pam, what
9 I'm hearing you say --

10 BOARD MEMBER NORD: There's wiggle room.

11 CHAIRPERSON PREZEAU: What I'm hearing you say is
12 there's a possible way for us not to watch this today --

13 BOARD MEMBER PHILLIPS: There's the statute of
14 limitations, but ...

15 CHAIRPERSON PREZEAU: Are we going to apply the
16 discovery rule?

17 ASSISTANT ATTORNEY GENERAL REULAND: You guys are a
18 quick study.

19 CHAIRPERSON PREZEAU: When does the toll start? We
20 don't want this information to be stale.

21 BOARD MEMBER LEWIS: We're still on the record.

22 CHAIRPERSON PREZEAU: Thank you, Janet.

23 ASSISTANT ATTORNEY GENERAL REULAND: They've got it
24 all set up and ready for us. So I'm not saying that we
25 shouldn't -- that you shouldn't do it today. I'm just

1 suggesting that if you don't want -- do you want to do it
2 again for the other half of the Board members?

3 CHAIRPERSON PREZEAU: Nope.

4 ASSISTANT ATTORNEY GENERAL REULAND: Or are they
5 going to do it on their own to complete it?

6 CHAIRPERSON PREZEAU: So here's my perspective. I
7 know it's a beautiful day. I know it's July. It's also
8 1:30. What I would like to do is queue it up and watch
9 it. It's been scheduled.

10 Elyssa, we've gone through the hoops to make sure we
11 can do it. I would prefer that we watch it. And we'll
12 deal with whatever we deal with later.

13 The other seven will --

14 BOARD MEMBER LEWIS: What if you can't see it?

15 BOARD MEMBER PHILLIPS: It looks blurry.

16 BOARD MEMBER LEWIS: We'd have to go stand right up
17 next to it. It's much easier on your screen, your
18 computer screen.

19 CHAIRPERSON PREZEAU: So is this what it's going to
20 look like?

21 BOARD MEMBER: It's a video.

22 BOARD MEMBER: No.

23 MS. ZYSKI: There's two videos.

24 CHAIRPERSON PREZEAU: So let's watch -- and if you
25 have to move in order to better see the screen, feel free

1 to sit in the chairs that are up front.

2 BOARD MEMBER: That's just the link. That's not --

3 CHAIRPERSON PREZEAU: Scroll it.

4 BOARD MEMBER: So is our first one Lesson 1?

5 MS. ZYSKI: Pam, are we just watching the lessons 2
6 and 3 that pertain just to open government training?

7 ASSISTANT ATTORNEY GENERAL REULAND: Only to open
8 public meetings are the only ones that this Board has to
9 watch. We do not have to know how to retain public
10 records. That is Larry's job.

11 SECRETARY VANCE: You don't need to know the records.

12 ASSISTANT ATTORNEY GENERAL REULAND: You don't have
13 to do public records.

14 SECRETARY VANCE: So the only thing that we're
15 looking at is --

16 ASSISTANT ATTORNEY GENERAL REULAND: The public
17 meetings.

18 SECRETARY VANCE: -- Office of the Attorney General,
19 Public Records and Open Meetings -- Public Records and
20 Open Meetings. Let's go down.

21 Lesson 3. Okay.

22 CHAIRPERSON PREZEAU: Roll tape.

23 SECRETARY VANCE: This video is 16 minutes and 41
24 seconds long.

25 BOARD MEMBER: Yay.

1 CHAIRPERSON PREZEAU: 16 minutes. Roll it. Roll
2 tape.

3 THE COURT REPORTER: Do I have to be here for this?

4 BOARD MEMBER PHILLIPS: Yes.

5 CHAIRPERSON PREZEAU: No. But you're going to have
6 to be here when we adjourn because we technically have not
7 adjourned.

8 BOARD MEMBER: Can we adjourn, then watch?

9 CHAIRPERSON PREZEAU: Can we adjourn and then watch
10 the training?

11 ASSISTANT ATTORNEY GENERAL REULAND: Well, the
12 problem would be is that you still would constitute a
13 quorum, and any discussions as a group would then be
14 subject to a public meeting.

15 I think that you can not have it on the record, and
16 Milton could not be typing; he could watch it.

17 If you don't have any discussion, the issue is
18 whether there is discussion or questions and it could be
19 construed as an open public meeting.

20 CHAIRPERSON PREZEAU: Got it.

21 BOARD MEMBER NORD: I make a motion there should be
22 no discussion or questions.

23 CHAIRPERSON PREZEAU: Just watch the -- it's 16
24 minutes. Roll. Roll it.

25 ASSISTANT ATTORNEY GENERAL REULAND: But I don't

1 think Milton needs to transcribe it.

2 (Off the record during
3 video presentation.)

4 CHAIRPERSON PREZEAU: All right. So thank you for
5 providing that rivoting training. I'm very happy that we
6 were able to complete that.

7 So I want to do one thing. I know you guys know this
8 because you signed this card. But we wanted to especially
9 wish Milton a happy birthday today.

10 It's your birthday.

11 THE COURT REPORTER: And I'm held hostage here.

12 CHAIRPERSON PREZEAU: Happy birthday. So in respect
13 of Milton's birthday, is there a motion to adjourn?

14 BOARD MEMBER: Motion.

15 CHAIRPERSON PREZEAU: Oh, Larry has one more thing.

16 SECRETARY VANCE: I just wanted to say that the
17 discussion about amending the bylaws, I'm going to
18 slightly revise that document. So the document that you
19 all have currently is going to have a slight revision to
20 it.

21 CHAIRPERSON PREZEAU: Let's just make sure we get it
22 out 20 days.

23 SECRETARY VANCE: We're going to make sure we get it
24 out in 20 days.

25 CHAIRPERSON PREZEAU: Okay. Motion to adjourn?

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Motion to Adjourn

BOARD MEMBER NORD: So moved.

CHAIRPERSON PREZEAU: Second?

BOARD MEMBER CORNWALL: Second.

CHAIRPERSON PREZEAU: A motion and second to adjourn.

All those in favor, signify by saying "aye."

THE BOARD: Aye.

CHAIRPERSON PREZEAU: All those opposed? We are
adjourned. Thank you.

Motion Carried

(Whereupon, at 1:54 p.m.,
proceedings adjourned.)

