

Exhibit 1 - Excerpts
Texas Lottery Commission Meetings
(Proposing to write into the rule that they
were going to pay the "advertised" jackpot)

April 26, 2001 Meeting of the Texas Lottery Commission:

MS KIPLIN: I will mention that there are additional proposed amendments that are not necessarily part of the rule review process. Those are two game rules, the Lotto Texas and the Texas Two Step rules. And it does relate to the advertised jackpot, and it makes it clear that the Commission is going to pay the advertised jackpot. It addresses what occurs if there is an underage or an overage regarding what is advertised with the jackpot. I would like to identify for you three changes that have been made to this package since the time that you received your package. And two of the changes address how a high-tiered claim is to be made to the commission and how the Commission shall pay. And those are both in Rule 401.302 and Rule 401.304.

CHAIRMAN CLOWE: And point us to that --

MS. KIPLIN: Yes.

CHAIRMAN CLOWE: -- would you, please. In the package that we were given this morning, have you got a page reference?

MS. KIPLIN: Well, there are no pages on this because this is in registered format. But I will -- let's see if I can't count --

- COMMISSIONER CRINER: You highlighted everything with an underline. Right?

MS. KIPLIN: Yes. This will be new language. The first change you will find is 401.302 (F) (2). It's on the ninth page of your package.

CHAIRMAN CLOWE: Starting with the first page of the rules?

MS. KIPLIN: Yes. Yes, sir.

CHAIRMAN CLOWE: All right. I think we're there. Is the first, No. 5, "if a person," on that page?

MS. KIPLIN: It's 401.42 -- let me just come over. If I might approach you-all, it might be easier.

CHAIRMAN CLOWE: Yeah.

MS. KIPLIN: The change is to make it consistent where it will read "upon validation of the ticket as a winning ticket, the Commission shall pay the claimant the amount due in accordance with Commission procedures."

That is new language. That language does not now currently exist in 401.302 (F) (2). That language -- the purpose of that language is to make it consistent with, one, the Commission's practice, but also to make it consistent with existing language that's in 401.304 (D) (4). And that language, that is current language, is being amended to make both of these consistent: one, on how we pay instant games, which is 401.302, and then also on how we pay on on-line games, which is 401.304 (D) (4).

Those are two changes that were not in the package that was overnighted to the Commission on Monday, because those changes were made just on further review to make sure that we're presenting the best package we can to the Commissioners.

CHAIRMAN CLOWE: And again, state the substance of those changes.

MS. KIPLIN: Okay. On 401.304, if you adopt the language ultimately, it will read "upon validation of the ticket as a winning ticket, the Commission shall pay the claim in the amount due in accordance with Commission procedures." That's to address the flexibility in terms of potential direct deposit; and then, of course, the wiring and, of course, the payment by check. So there are different methods that we use.

Ms. Kiplin was either confused or purposely mislead the Commissioners as 401.304 (D) (4) did **NOT** include, "*in accordance with Commission procedures.*" (May 11, 2001 Texas Register) (Exhibit A)

Ms. Kiplin also makes it clear what is meant by "*in accordance with Commission procedures*" and it has nothing to do with the amount paid to jackpot winners. Contrary to what the audit report said.

Specifically, 401.304 (e) (4) said, "If the claim is presented to the lottery, the claimant shall fill out a claim form, if required, and submit it with apparent winning ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall present or mail a check to the claimant in payment of the amount due. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. Winning or non-winning tickets will not be returned to the claimant." (Exhibit A)

The proposed language read, "(d) (e) (4) To claim an on-line game prize of \$600 or more the claimant shall present the winning on-line ticket to the commission. For any [If the] claim [is] presented to the commission [lottery], the claimant shall follow all procedures of the commission related to claiming a prize, including but not limited to filling [fill] out a claim form [if required,] presenting appropriate identification if required, completing the back of the ticket, and submitting these items including [submit it with] the apparent winning ticket to the commission [lottery] by mail or in person. Upon validation of [determination that] the ticket as [is] a winning ticket, the commission [lottery] shall pay [present or mail a check to] the claimant [in payment of] the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. Tickets [Winning or non-winning tickets] will not be returned to the claimant. (As seen in Exhibit A)

The May 30, 2001 Meeting of the Texas Lottery Commission

MS. KIPLIN: Yes. Commissioners, you should have received, either by e-mail or in delivery -- I think, Commissioner Criner, for you, it was a hand delivery -- a draft rule making. If you did not, please let me know and I'll be glad to provide it to you right now. (Tenders documents.)

Commissioners, if you will recall, at the May commission meeting -- or pardon me, the April, the end of April commission meeting on the 26th -- the Commission voted to propose rule making in a package. And it was on Subchapter D of Chapter 401 of the game rules. Two of those rules were the Lotto Texas rule and the Texas Two Step rule. The proposed amendments were proposed to respond to a couple of issues. One, it was a rule review process, and it was to make the rule making amendment -- the rules consistent with existing law and clarify current agency practices and procedures relating to those game rules.

There were additional rule makings to the Lotto Texas and Texas Two Step that related to the advertised jackpot and the fact that the Commission -- in particular, with the Lotto Texas -- was going to pay the advertised jackpot, **and not the jackpot driven necessarily by sales.**

We received a comment in that rule making -- and since the preparation of this draft, I've also received another comment -- that indicated that the language in that proposed rule making on these two particular rules, from that reader's perspective, was not clear and contained potentially conflicting language. We took a look at that and decided that the best way for the staff to proceed would be to come to the Commission at this commission meeting and request that you withdraw those two rules from that Subchapter D rule making, and to propose additional amendments to those two rules, being the Lotto Texas and the Texas Two Step rule, to try to respond to what I would characterize as a perceived potential of conflicting language.

And that is the purpose of the rule making that is before you today. It is to make very, very clear that if the Commission does vote eventually to approve to adopt these two rule makings, that the Commission will be paying the advertised jackpot. And that amount is the amount that the Commission authorizes its vendors to publicize. And there is an additional definition of advertised jackpot in this rule making that did not exist and **does not exist today in the Subchapter D rule making.**

COMMISSIONER CRINER: This is -- excuse me. This is to say -- we had a discussion one day about the fact that when we had the \$85 million deal, the prize kept rising because there were so many tickets sold. We are saying that if we're still going to pay \$80 million, that's what we're going to pay --

MS. CLOUD: Right.

COMMISSIONER CRINER: -- whether it goes up or down.

MS. CLOUD: Right.

COMMISSIONER CRINER: The number that we forecast is the number --

MS. CLOUD: Right. Let me give you another example of that. A \$4 million jackpot, which is our minimum jackpot, **we don't have the sales to pay a \$4 million jackpot. So in order to supplement the jackpot at the lower level, being able to roll over an excessive amount that's advertised would be beneficial to the lottery,** versus reducing the minimum to a \$2 million jackpot, which is about where we would be.

MS. KIPLIN: I will say, all of the comment that was received as part of the other rule making was opposed to the Commission paying the advertised jackpot and wants the Commission to continue to pay the jackpot based on the contributions to the prize categories; in other words, what is driven by sales. So I want to make sure that you are informed of the comment that has been received. This rule making does not concur with that comment. In other words, this rule making is to make clear it is the advertised jackpot that the Commission will pay.

MS. KIPLIN: Just to be clear, the present rules in place -- the Texas Two Step is an advertised jackpot. We'll continue to pay the advertised jackpot. **The Lotto Texas is a jackpot driven by sales.**

MR. TIRLONI: And just to be clear, too, the Texas Two Step has no annual payment option on that game. That game is a cash game. We do pay -- regardless of what the jackpot climbs up to, we do pay that jackpot in cash in a lump sum payment. So the 25 annual payment or the cash value discussion really does not apply to the Two Step game, per se.

Ms. Cloud said, "an excessive amount." What gives the lottery the right to determine what is an "excessive amount" for a person to win playing a game with such high odds and for jackpots that are driven by sales? Big jackpots entice sales which is what the TLC wanted - that's why they increased the odds twice - to prevent players from winning thereby creating larger jackpots. Now they say there are "excessive funds" which should be added to reserve and not paid to the winner?

At the July 24, 2001 Meeting of the Texas Lottery Commission:

MS KIPLIN: And then finally, clarifying the term "advertised jackpot." At the present time, the Texas Two Step rule, as voted, adopted, and effective, does provide for an advertised jackpot, and that meaning what -- the player has a winning ticket and submits it, and that's what the player will receive, is the advertised jackpot; **not the case with Lotto Texas.**

CHAIRMAN CLOWE: Then, when it is adopted by the Commission, it transforms into the advertised jackpot?

MS. KIPLIN: **At this point, that jackpot is an estimated jackpot for the purposes of the Lotto Texas rule at this point. If the Commission votes to adopt and convert it to an advertised, that jackpot amount, once approved by the executive director, is the advertised jackpot.**

CHAIRMAN CLOWE: And that's locked in at that point?

MS. KIPLIN: Right.

CHAIRMAN CLOWE: **It is not locked in now?**

MS. CLOUD: **That's right.**

Sept 28, 2001 Public Comment Hearing The Texas Lottery Commission

Transcript Not Available. Counsel Kim Kiplin, as well as other staff members, heard my comments regarding the proposed rule to pay the “advertised amount” rather than the percentage allocated from sales to jackpot winners. The transcript has never been posted on their web site.

One this day, I cited the many different methodologies used to pay jackpot winners between Sept 1996 - Sept 2001 which included paying more than and less than allocated to jackpot prize winners. I asked how this could be since the rule said that all prizes, except the 4th prize, would vary due to pari-mutuel calculations? Ms. Kiplin’s response was that she was there to take comment, not answer questions.

After the comment hearing and off the record, Ms. Kiplin & Diane Morris, told me that they considered my comments “serious allegations.” They asked that I provide my spreadsheets to the Commission to assist in an audit that would be done as a result of my comments. Because I no longer trusted the TLC, I refused explaining that they already had the information at their fingertips. See letter from Kim Kiplin - Exhibit C

Even though the TLC had all of the information needed to confirm my allegations at their fingertips, it took them one year to produce the first audit report which did in fact, confirm everything I said but they denied any wrongdoing's on the part of the Texas Lottery.

At the Oct 9, 2001 Meeting of the Texas Lottery Commission

MS Kiplin: ... The Commission -- the staff's reasons for wanting to go to an advertised jackpot are set out in the documents. And I'll leave that to you because I know you have probably had an opportunity read that. I will say that it's hinged on a couple of factors. One is wanting to pay the jackpot that the Commission believes is in the minds of the players at the time that the players are purchasing their tickets.

And the other issue has to do with the prize reserve fund and the ability to be able to use the money in that prize reserve fund to supplement the lower levels of the jackpots' amounts, particularly the starting jackpot amount.

401.305 (4) (B) Prize Reserve Fund said: “The Lotto Texas prize reserve fund may be increased or decreased by any amount allocated to the prize pool and not paid to winners. The Lotto Texas prize reserve fund may be increased or decreased, for example, by rounding down, paying Lotto Texas prizes and **rollover amounts from the fourth prize.** The Lotto Texas prize reserve fund may be used only for the Lotto Texas game.”

The proposed changes for 401.305 (4) (B) was: The Lotto Texas prize reserve fund may be increased or decreased by the difference between the first and fourth prizes won and that prize

category's share of the prize pool. The Lotto Texas prize reserve fund may be used only for the Lotto Texas game. See "Exhibit B".

The "reserve fund" was created and intended to be used to fund the 4th prize, if needed, which was a "guaranteed" prize. All other prizes were based on pari-mutuel calculations.

COMMISSIONER WHITAKER: That's all right. And my the question is, do you interpret or does the Commission -- do you interpret the "**will include the rollover**" to be nondiscretionary language?

MS. KIPLIN: I think "will" is generally mandatory language.

COMMISSIONER WHITAKER: You interpret the "may be 68.24 percent of the prize pool" to be discretionary?

MS. KIPLIN: Yes, I do.

COMMISSIONER WHITAKER: Within what bounds?

MS. KIPLIN: Within the bounds of the agency.

COMMISSIONER WHITAKER: So it can go anywhere from 0 to 68.24 percent?

MS. KIPLIN: I think if the agency wanted to take it to that extreme, it could. I don't think that that's what's in the minds of the agency, nor, if you look at past history, is supported.

COMMISSIONER WHITAKER: What would be the past -- what would the past history support? What range?

MS. KIPLIN: I think I'll turn that over to our financial folks in terms of historical information on jackpots.

MR. SANCHEZ: For the record, my name is Bart Sanchez. I'm the director of financial administration. I think the point in question is that when we consider to estimate the jackpot, we do consider the amount of the prize pool, **which we look to be 68.24.**

401.305 Indirect Prize Contribution said: (II) The indirect prize category contribution, which may be increased by the executive director, **will** include the roll-over from the previous drawing, if any.

401.305 - Prizes for Lotto Texas. (1) Prize amounts said, The prize amounts, for each drawing, paid to each Lotto Texas player who selects a matching combination of numbers will vary due to a pari-mutuel calculation, with the exception of the fourth prize, which is a guaranteed \$5.00. The calculation of a prize shall be rounded down so that prizes can be paid in multiples of whole dollars. Each prize category breakage, with the exception of the fourth prize breakage, will carry forward to the next drawing for each respective prize category. The fourth prize cate-

gory breakage will be placed in the reserve fund. No prize amount shall be less than \$5.00. The prize amounts are based on the total amount in the prize category for that Lotto Texas drawing distributed equally over the number of matching combinations in each prize category.

Regarding the historical information on jackpot payments, attached is a spread sheet showing the methodology used for each win between Sept 1996 and July 2003. See column titled "Pay Code." The definitions for each classification and time lines referencing each rule change is also included on the spreadsheet. Since the inception of Lotto Texas, all but 13 Lotto Texas winners received at least the amount in the prize pool - contrary to what Ms. Cloud said.

MR. TIRLONI: Commissioners, I have spoken with officials at the New York and California Lotteries. Both states are operating their Lotto games the way we were proposing to operate our Lotto Texas game. And basically, a quick summary is this: They advertise the jackpot. If sales are not strong enough to cover the jackpot that they advertise, they use their reserve fund to supplement or to pay the advertised jackpot amount. If their sales are stronger than anticipated, the extra or excess is rolled into their reserve funds. And then they use the moneys in their reserve funds to supplement jackpots, future jackpots in the future, if they need to. **And again, this is how we are proposing to operate Lotto Texas.**

Why are they bothering to propose a rule change? According to the audit report, it was already OK to pay this way anyway.

MR. TIRLONI: I have -- California faxed me their actual rule that they operate their Lotto Texas game under. And so I have that. And their rule describes what I've just described, how if the -- if they advertise a jackpot and if the sales are stronger, then they take that extra and they roll it into their reserve fund. If sales are weaker than anticipated, they utilize their reserve fund. So, yes, I've received that from California.

California wrote it into their rule that they were guaranteeing the amount advertised BEFORE they began paying winners the amount advertised. New York, however, had been paying the amount advertised PRIOR to writing it into their rule but when they saw what was happening in Texas, they immediately changed their rule to make it "legal." I believe New York's new rule became effective in Sept 2001.

CHAIRMAN CLOWE: I think the question that Commissioner Criner asked went to the state auditor's audit in, I believe, 1997. And they made recommendations that were numerous and broad, if I remember correctly.

MR. SANCHEZ: Correct.

CHAIRMAN CLOWE: And is that your answer to Commissioner Criner's question in regard to that audit? Not our internal audit.

MR. SANCHEZ: Yes, with regard to the estimation of sales. They also made some recommendations in regards to the prize reserves. It's just at that time, during that time period, we were dealing with a \$40-million prize reserve. They were concerned that the executive director had too much discretion over that amount.

So we -- they, in fact, researched and scrutinized and recommended for us to re-classify that prize reserve from classifying it as a liability in our balance sheet financial statements to a fund equity, to a restricted fund equity. That way, it will show a financial statement reader that it's a fund equity and it's really -- the agency has discretion over that fund. So they wanted to highlight that. And at that time, my predecessor, I guess, disagreed with that view and -- to the point of trying to get the financial auditors and even GASB, which is the Governmental Accounting Standards Boards, to get their opinion.

But ultimately, when I became involved, I saw that it was reasonable to go ahead and agree with the state auditor's interpretation of classifying the prize reserve into a restricted fund equity, which right now, that's where it is on our financial statement. Of course, they also recommended for us to set parameters of the use of the prize reserve because at that time, I think in -- what is it, October '97 or September '97, the agency used the prize reserve for anniversary and birthday celebrations and funding that jackpot of \$10-million increments. So they kind of regarded that as maybe too much discretion.

CHAIRMAN CLOWE: Whose anniversary? Whose birthday?

MR. SANCHEZ: The Lottery's anniversary.

MS. CLOUD: **Commissioners, I would like to add that was before my time.**

COMMISSIONER CRINER: Is all this documented? I mean, what I'm -- my point is, there is a process. A process needs to be documented. Is there a -- in those SOPs, are there any guidelines that limit the amount of the cash reserves based on what the auditor said? In other words, how big can we make that cash reserve or that prize reserve, or how small does it need to be?

MR. SANCHEZ: **At the present time, our procedures do not address that.** I guess given the last two or three years, the reserve has been declining.

COMMISSIONER CRINER: But, I mean, even the birthday stuff, that's not in the SOPs?

MS. CLOUD: The reserve is to be used as prizes and --

COMMISSIONER CRINER: **Is there a written procedure on how to use the reserve? That's my question.**

MR. SANCHEZ: There was a procedure back in '97, which I guess did address the use of the reserve for those type of events, promotional events.

COMMISSIONER CRINER: I -- I don't want to go any further.

COMMISSIONER WHITAKER: Can I ask a follow-up question? There is currently no SOP that states that the upper level of the reverse should be no more than -- or the target upper level should be no more than "X" or the basement should be no lower than "Y"? There's no such SOP now, is there?

MR. SANCHEZ: That's correct.

COMMISSIONER WHITAKER: In your opinion, was that something recommended by the auditors or not?

MS. CLOUD: No, that was not. I don't think it was. That was not my interpretation.

MR. SANCHEZ: I think my interpretation at that time, I think it was.

MS. CLOUD: It was to limit --

MR. SANCHEZ: I think, in a sense, because they were concerned that the reserve was getting too high and how -- what the discretionary use was going to be. I can see it at that point. Right now, I'm sitting with a reserve of 8 million. I would probably -- given the direction we get from these rules, I probably would start acting and trying to write up some more detailed parameters of ranges of what the reserve -- if the reserve goes in the neighborhood of 10 to 12 million, what to do with the reserve.

So there WAS a policy on how to return the reserve money to the People of Texas that apparently was changed by Ms. Kiplin as she was the director at the time the first winner was short-changed - paid less than the amount allocated as per the rule.

Sounds like they think that by adopting the proposed rule - allowing them to "legally" pay the "amount advertised" - will increase the prize reserve fund. Is that what happened in the other states? This is willfully and maliciously cheating players out of their rightful share of sales as quoted in the rules and in press releases. Where's consumer protection for the People of Texas?

At the Nov 8, 2001 Meeting of the Texas Lottery Commission

MS. CLOUD: -- what we're doing. The greater of the two, we pay -- when the jackpot, I mean, when we underestimate the jackpot and the sales draw at a higher amount, we're paying the higher amount.

COMMISSIONER WHITAKER: If that's true, then why are you getting dots above zero?

DR. EUBANK: Well, some of this is from the three of six, but I don't know -- I don't know the explanation for this. How long has the paying what you -- how long has that been in effect?

MS. CLOUD: Since the -- well, we've had -- we've had a couple of situations where before my time, it didn't happen but since I've been in here, we've been paying what the advertised jackpot is and if the sales came in higher, we've been paying the higher jack-pots. Bart, do you want to --

MR. SANCHEZ: From April of 2000 on forward to today, we've been paying under that --

DR. EUBANK: I don't know the answer to your question. I'd have to go back and look at the prize reserve data to figure out how that actually happens but I understand what you're asking.

COMMISSIONER WHITAKER: Well then you -- could you do that?

DR. EUBANK: Sure.

In March of 2000, I began posting on my web site, lottoreport.com, exactly how much a winner should receive if he won Lotto Texas. This is precisely when they began paying winners according to the adopted rule. Ms. Cloud is stuttering. Ms. Cloud said "*since I've been here we've been paying the higher jackpot.*" This is absolutely NOT true. Please notice on the spreadsheet that the winners who were cheated fell ONLY under the direction of Ms. Kiplin as Acting Executive Director and Ms. Cloud as Executive Director.

MR. TURLONI: We've had two hits at the four million level since we've made that matrix change in July of 2000.

DR. EUBANK: And that's what that matrix change is supposed to do anyway, so you shouldn't see, you know, on the average, you shouldn't see a winner until you've had about 26 million tickets bought and that takes you beyond, what, probably nine, 12, something into about the 20 million dollar jackpot range. So that's all I had to say, I'll be glad to answer questions you may have.

On Saturday, Jan 22, 2005 the Lotto Texas jackpot was an advertised \$54 million. This draw was the 28th draw in the roll cycle, sales were only \$4.6 million and needless to say, there was NO winner. The reason? They didn't sell 43 million of the total combinations - compliments of the increase of odds in May 2003 where the People said NO to this change.

A little sales historical data for you. On March 3, 2001, there was a \$56 million jackpot. Sales were \$20.3 million. On Oct 17, 1998, there was a \$50 million jackpot. Sales were \$23.3 million.

COMMISSIONER WHITAKER: Would you articulate, any of the three of you, why you think that is a sound business practice?

MS. CLOUD: Well, I believe it's a sound business practice because of the time it takes to grow the jackpots and the sales that it takes to grow those jackpots, you're not benefitting the game by starting off so low and taking so long to build the jackpot to get to a level where your player interest come -- your players really come into the game. To me, it's a business decision based on the odds of getting hit at those levels versus the amount of sales that you're going to generate.

MR. SANCHEZ: I guess knowing that you have the use of the prize reserves, I would support keeping the starting jackpot at four million and going to the six million dollar level.

COMMISSIONER WHITAKER: And why is that a good business policy, in your opinion?

MR. SANCHEZ: Well, in the sense of I think Dr. Eubank explained it out there, it's going to take far more to build the jackpot when you go down to three or two and you don't know what sales are going to decline. It's also going to be a perception of your questioning the confidence of the game.

CHAIRMAN CLOWE: My understanding is that it's your recommendation as quantified on the draft that Kim has given us that the jackpot be the higher of the advertised or actual sales amount?

MS. CLOUD: Yes.

CHAIRMAN CLOWE: Never if sales were less than the advertised, that that be paid?

MS. CLOUD: No.

MS NETTLES: ... For Texas, I have the numbers and I have calculated them, and as of last month, there was -- if paid according to the rule, of course, by going by the rule, taking the allocated amount versus the actual amount paid, there should be 113 million in reserve. And you can take the prizes and figure it all out. It has never been needed for the three of six. There's excess taken in that 1 percent back then or 1.1 percent today. Since they added the four balls, they haven't needed anything.

Since September of '96, the commission has overpaid winners by over 59 million dollars and when I say overpaid, what I mean is paid more than the amount in the prize pool. Okay.

COMMISSIONER WHITAKER: You don't like that idea?

MS. NETTLES: Overpaying them? Well, it makes me wonder where you get the money. If it's supposed to be divided into shares, how can you overpay? I can't overpay 59 million dollars on my account, can you?

COMMISSIONER WHITAKER: So you don't like that idea?

MS. NETTLES: I don't know where the money came from. I'd like to know how you got it, since this is the rule, this is how the winners are supposed to be paid, where did that 59 million come from?

COMMISSIONER WHITAKER: Have you determined that? Have you done an analysis of that?

MS. NETTLES: Yes.

COMMISSIONER WHITAKER: Where does it come from?

MS. NETTLES: Bart told me that it came from reserve and that's -- in fact the day he told me that, he says, Dawn, I said that they're overpaid by 212 million dollars just since they've added the four balls and I said, and Bart, since '96, they've overpaid by 59 million, I said where'd you get the money? And Bart says: Dawn, have you calculated the total reserve fund? And I said no. And he says, well, I think if you will, you'll see that it is carried forward all the way through. So I did and that's when I realized that there was supposed to be -- that it should have 113 million.

If everything was paid by the rules, there should be 113 million in the reserve fund so -- but that's from inception. The 59 million was just since September of '96.

The reserve funds, when I read the rules and in all the conversations I've had with this Commission, and you can ask anybody who calls customer service and they inquire about the 1 percent for reserve, they're always told that money is used only for the three of six prizes, that's what it's there for, is to fund the three of six. If we don't have enough money allocated from sales, then the monies are used for the three of six prizes.

COMMISSIONER WHITAKER: Who do you say says that?

MS. NETTLES: Customer service has told me that for years, as well as Steve Levine, everyone has always, every time that's come up for the reserve fund, they've always said it's been used for the three of six prizes. Plus, that's what's in the rule. That's the way it was designed. The three of six was only -- that's the only way the reserve fund was to be increased or decreased was from funds not needed for three of six or used to pay three of six.

COMMISSIONER WHITAKER: May I look at your copy of that a little bit just while you're talking?

MS NETTLES ... With regard to lowering the jackpot to two million, and these are comments that I came up with as I was listening to everybody talk.

With regard to lowering the -- starting jackpot at two million, I have an opinion on that too. When Lotto Texas started, it started out at two million. The money that you have in sales right now are your core players that play no matter what, no matter how much the jackpot is. They're not going to change except you've lost a lot of players when you added the four balls.

We sat here a year ago and the whole purpose [of the rule change] was to get your sales up so that you could keep this four million. Well, you can keep the four million if you want to but that's bad business. How can you -- you're going to have to lower it because the sales are going to continue to decline.

So my opinion differs from theirs on the two million. I don't believe it's going to affect your sales at all. I think you're going to have the same thing that you have right now and the only way that

you're going to get your sales back up is to rebuild the integrity of this commission, which has suffered a lot lately.

Feb 12, 2002 Commission Meeting - Rule Adopted

CHAIRMAN CLOWE: Questions or comments? Commissioners, I have an appearance form from an individual who wishes to comment on this item. And in light of the general counsel's comments to us, I need to ask you your pleasure, in that if this individual makes comments that are outside the record, we will not be able to act on this item, either of these rules today. It's my understanding from what you said, Counselor, if comments are made within the record, that doesn't preclude us from taking action on these rules; is that correct?

MS. KIPLIN: If comments are made within the record, it doesn't preclude you from taking action? I'm sorry, I'm not --

CHAIRMAN CLOWE: My understanding is that the applicant to appear before the Commission is Ms. Dawn Nettles, and my understanding is that she has filed written comments.

MS. KIPLIN: Yes, that is --

CHAIRMAN CLOWE: So if her verbal comments fall within the scope of her written comments, that would not preclude us from acting.

MS. KIPLIN: That is true, but it requires careful listening. And I'll just tell you that I am not prepared to move forward today, in terms of --

CHAIRMAN CLOWE: You wouldn't be in a position to interpret that?

MS. KIPLIN: No, because I would want to take a look at the record.

CHAIRMAN CLOWE: Okay. That's fine.

MS. KIPLIN: And I'd want to go back and --

CHAIRMAN CLOWE: That's fine. So in other words, if the Commission hears comments, then we will not be able to act on these two rules today.

MS. KIPLIN: My recommendation is against it. It will give staff the time to go back and read the transcript. But I will say one thing that I forgot to say, and that is that this particular rulemaking was published in the December 21st, 2001. So it's within the Commission's discretion on how you'd like to proceed.

You have 180 days from when the proposed amendments are filed before the rulemaking is actually -- expires by operational law. You've heard the staff's desire to go forward today. While this one is new rulemaking December 21st, I think it's fair to say that there's informal discussion with regard to the several different rulemakings that have been proposed and then withdrawn on, I would say, for the most part is the same subject matter.

COMMISSIONER WHITAKER: Ms. Kiplin, when did the first version of the rule, first iteration get published?

MR. TIRLONI: I believe that was back in May or June of last year.

MS. KIPLIN: Thank you. I didn't bring those rulemaking files because it's a different one. I know that's it's been some time ago.

COMMISSIONER WHITAKER: And how many times have we received comments from Ms. Nettles about these rules?

MS. KIPLIN: Every time that we've had a proposed rulemaking on changes to the Lotto Texas and Texas Two Step, Ms. Nettles has provided comment.

CHAIRMAN CLOWE: Any questions or comments? Is there a motion? Or what's your pleasure, I guess, I should say before I ask for a motion. Or do you want to signify your pleasure by making a motion?

COMMISSIONER CRINER: We're going to motion on something?

COMMISSIONER WHITAKER: I move to adopt the rules.

CHAIRMAN CLOWE: I would second that. All in favor, please say aye.

COMMISSIONER CRINER: Aye.

COMMISSIONER WHITAKER: Aye.

CHAIRMAN CLOWE: Aye. Opposed, no. The vote is three zero in favor.

MS. KIPLIN: And so your adoption is with the change that the staff has laid out?

CHAIRMAN CLOWE: That is correct on both rules. The next item is number 14, ...

I drove 200 miles to attend this meeting because I had something to say. But they refused to allow me to speak.

My intended comment for them was that to guarantee the greater of either the amount in the prize pool or the investment cost was foolish, too risky and bad business. If they wanted to get sales up, they should increase the low tier prizes and do away with the reserve so that they would really be returning 55% of sales to the People like they said they were already doing. This comment had been included in previous written comments.

In Conclusion

The Commission literally robbed Peter to pay Paul between Feb 1997 and Feb 2000 on 13 wins. The rule(s) said the winner "will" receive the "roll-over," the prize was "pari-mutuel" and was based on the "percentage allocated" from "total sales." IF they were acting within the rules when they cheated these 13 wins, then why did they suddenly switch in March of 2000 to paying "all that was in the prize pool" to Lotto Texas jackpot winners? Why was it necessary to propose and adopt a new rule? Why does their testimony conflict with the Auditors findings?