

MAINE STATE HARNESS RACING COMMISSION

**IN RE: PARI-MUTUEL HARNESS)
RACING LICENSES, DATE) DECISION AND ORDER
ASSIGNMENTS FOR)
CALENDAR YEAR 2023 &)
AUTHORIZATION)
REQUESTS FOR)
INTERSTATE SIMULCAST)**

I. INTRODUCTION

On November 15, 2022, the Maine State Harness Racing Commission (“Commission”) held an adjudicatory hearing in Room 101, Deering Building, 90 Blossom Lane, Augusta Maine pursuant to Title 8 M.R.S. §§ 271, 275-N, 5 M.R.S. §§ 9061 – 9064, and Chapter 19, Section 4 of the Maine State Harness Racing Commission Rules (“Commission Rules”). The purpose of the hearing was to consider applications for licenses to hold live harness horse meets for public exhibition with pari-mutuel pools at agricultural fairs and racetracks in the State of Maine, to allocate race dates for live harness racing, and to authorize interstate simulcasting at commercial tracks, all for calendar year 2023. The applicants were:

1. Sagadahoc Agricultural & Horticultural Society, Topsham: Fair Meet (“Topsham Fair”);
2. Skowhegan State Fair, Skowhegan: Fair Meet (“Skowhegan Fair”);
3. Union Fair Society, Union: Fair Meet (“Union Fair”);
4. Windsor Fair, Windsor: Fair Meet (“Windsor Fair”);
5. Franklin County Agricultural Society; Farmington Fair, Farmington: Fair Meet. (“Farmington Fair”);
6. Cumberland Farmers Club / Cumberland Fair, Cumberland: Fair Meet and Extended Meet (“Cumberland Fair”);

7. West Oxford Agricultural Society / Fryeburg Fair, Fryeburg: Fair Meet (“Fryeburg Fair”);
8. HC Bangor, LLC; Bangor Raceway; Commercial Meet (“Bangor Raceway”); and
9. First Tracks Investments, LLC; First Tracks Cumberland; Commercial Meet (“First Tracks”)

The applications for licenses and race dates were heard on a consolidated basis pursuant to Commission Rule, Chapter 19, § (4)(5).

A quorum of the Commission was present during all stages of the proceedings. Harry Center, Barry Norris, Patricia Varnum, Diane Dunn, and Don Marean participated and voted as Commission members.¹ The Commission determined that, except for Commissioner Norris with respect to the Union Fair, Commission members did not have a conflict of interest that would prevent any of them from participating in the hearing.

The Department of Agriculture, Conservation and Forestry, the Maine Association of Agricultural Fairs, the Maine Standardbred Breeders and Owners Association, and the Maine Harness Horsemen’s Association (“MHHA”) have automatic intervenor status under Chapter 19, § 4(6). Executive Director Shane Bacon represented the Department of Agriculture, and Debbie Patterson and Mike Cushing were present for the MHHA. No other intervenors were present.²

¹ Commissioner Barry Norris is affiliated with the Union Fair and recused himself regarding all testimony, deliberations, and votes regarding that application.

² Although Diann Perkins of the Maine Standardbred Breeders and Owners Association was not present, Executive Director Bacon relayed her request that the licensees sponsor the Maine Sire Stakes races at their respective fairs and tracks. All agreed to do so.

II. STATUTORY CRITERIA

A. Licensing and Allocating Race Dates for Live Racing

Title 8 M.R.S. § 271 sets forth the criteria for licensing and allocating race dates for live racing. In accordance with 8 M.R.S. § 271(1), the Commission may issue a license to conduct racing when it is satisfied that (1) all of the laws and rules governing harness racing have been substantially complied with during the past year and will be fully complied with during the coming year; (2) the applicant, its members, directors, officers, shareholders, employees, creditors and associates are of good moral character; (3) the applicant is financially responsible; and (4) the award of racing dates to the applicant is appropriate under the criteria set forth in Section 271(2). Section 271(2) contains the following criteria for the Commission to consider when exercising its judgment and discretion in the assignment of race dates:

- A. The revenues to be generated, consistent with the profitability and financial health of the licensee and the development of revenues from interstate simulcasting of the licensee's race programming, for the operating account pursuant to section 287; the purse supplements pursuant to section 286; the Sire Stakes Fund pursuant to section 281; and the Stipend Fund pursuant to Title 7, section 86;
- B. The quality of race programming and facilities offered and to be offered by the licensee, the suitability of the applicant's racing facilities for operation at the season for which the race dates are requested and the ability of the applicant to offer racing at night;
- C. The necessity of having and maintaining proper physical facilities for racing meetings, including the ability to maintain ownership of or a leasehold on the facilities; and consequently, to ensure the continuance of the facilities, the quality of the licensee's maintenance of its track and plant, the adequacy of its provisions for rehabilitation and

- capital improvements and the necessity of fair treatment of the economic interests and investments of those who, in good faith, have provided and maintained racing facilities;
- D. The desirability of reasonable consistency in the pattern of race date assignments from year to year;
 - E. With respect to agricultural societies seeking licenses to conduct harness racing meets at the time of their annual fairs, the scheduling of agricultural fairs determined by the Commissioner of Agriculture, Conservation and Forestry pursuant to Title 7, sections 83 and 84;
 - F. The preservation of a diversity of harness racing tracks in the State;
 - G. The quality of the licensee's observance and enforcement of this chapter and the rules adopted pursuant to this chapter during the past year;
 - H. The extent to which the licensee fully utilized race dates granted to it for the past year;
 - I. The personnel and resources available to the commission for the enforcement of this chapter and the rules adopted pursuant to this chapter;
 - J. The likely availability of race-worthy horses throughout the year with a goal of promoting full cards and avoiding 5-horse fields; and
 - K. Such other criteria consistent with the betterment of harness racing and the public health, safety and welfare as the commission may establish by rule.

Among the other criteria to be considered and established by Commission Rule is the feasibility of the applicant conducting a race meet on dates other than those applied for, the winter training and stabling facilities provided by the applicant, and the competitive situations affecting certain applicants. *See* Commission Rule Chapter 19, § 4(11)(A)-(N).

Regarding commercial tracks only, the Commission may award fewer than the minimum race dates set forth in § 275-A(1) if both the track and the Maine Harness Horseman's Association give express written approval and credible evidence is presented that shows fewer race days is in the best interest of Maine's harness racing industry.

In summary, the Commission must determine, based on the witnesses' testimony and exhibits, whether each applicant should be granted a license to hold a live harness horse race or meet for public exhibition at which pari-mutuel betting is permitted, and if so, the particular date and time of day on which a licensee may conduct racing. The Commission is authorized to impose conditions on a license if one or more of the criteria are not met at the time the license is issued but may be brought into compliance within a time period during the licensing year. 8 M.R.S. § 271(6).

B. Simulcasting

Pursuant to 8 M.R.S. § 275-N, "[i]nterstate simulcasting always must be allowed at any commercial track."

III. DISCUSSION

A. Licensing

Executive Director Shane Bacon provided testimony regarding all the license applications. Mr. Bacon had prepared exhibits, with staff assistance, and submitted the race dates that all applicants had requested in a consolidated Proposed Race Date Calendar. Per a pre-hearing conference order, the Proposed Race Date Calendar was pre-admitted into the record as Exhibit 10.³ Mr. Bacon testified that all applications were complete, all applicants had complied

³ The pre-hearing conference took place on Wednesday, November 2, 2022 via videoconference. All applicants and automatic intervenors were notified via telephone and email of the date and time of the conference, and were provided a weblink and telephone number to dial into the conference via email. During the pre-hearing conference, the Presiding Officer set deadlines for the exchange of exhibits and objections to the same, and for the

with the harness racing statutes and rules for the prior year and were expected to for the coming year, and met all statutory and regulatory requirements for renewed licensure.

Christian Smith, CPA, certified fraud examiner, and Partner at WIPFLI reviewed financial information submitted by the applicants. Mr. Smith gave his professional opinion that each of the applicants had satisfied the requirement that they were financially responsible.

B. Race Dates

Regarding the race date assignment portion of the hearing, Mr. Bacon explained that the horse supply in Maine was low. Mr. Bacon explained that this was shown by Exhibit 8, a horse supply tracking sheet for calendar year 2022 created by the Commission Staff. Exhibit 8 shows the number of 8, 7, 6, and 5 horse fields raced by each applicant, and the number of racebacks each applicant had. Mr. Bacon explained that a raceback occurs when a horse races on multiple days in a week with not enough rest in between. While 4 days in between races is generally acceptable, fewer days rest can have negative impacts on the health of the racing horse.

Mr. Bacon explained that racebacks most often occur in prime fair season, which is July through October. This is because in addition to the commercial tracks, fair season picks up, and many fairs race in a short amount of time. The further into the season, the more days of racing occur with fewer, and sometimes no, days off from racing due to the fairs' schedules. This is shown in Exhibit 9. Mr. Bacon explained that the amount of racebacks can be tied to fairs that race many days in a row without breaks. Mr. Bacon also testified that as shown in Exhibit 8, generally the more racebacks an applicant has corresponds with more 5 horse fields and fewer 8 horse fields.

procedure of the November 15, 2022 hearing. No objections were made to any exhibits, therefore Exhibits 1 - 25 were preadmitted pursuant to the prehearing conference order issued on November 2 after the conference.

In order to address the low horse supply and amount of racebacks, Mr. Bacon contacted each fair-applicant in advance of the hearing to request that it take a day off from racing during its fair, so that there were not more than five days of racing in a row. With the exception of Fryeburg Fair, all the fair-applicants agreed to take a day off from racing.⁴ Fryeburg fair did not agree to take a day off from racing. Mr. Bacon recommended to the Commission that it not approve October 5, 2023 as a race date for Fryeburg Fair in order to address the horse shortage.

Barbara Gushee, Fryeburg Fair's Administrative Assistant, represented the Fair and testified in person at the hearing. Kim Pike, the Racing Director, also represented the Fair and testified via videoconference during the hearing. Mr. Bacon testified, via Exhibit 25,⁵ that Fryeburg had a large number of racebacks because it was later in the fair season and raced 6 days in a row in 2022. Mr. Bacon showed that Fryeburg had many races in which horses were getting 2 or 3 days of rest before racing again, and sometimes only 1 day of rest. Upon cross-examination by Ms. Gushie, Mr. Bacon testified that in making his recommendation, he took into account that the Fair must pay mandatory tote and sound fees for every day the fair is open, regardless of whether racing occurs. Despite that, he still believes a day off from racing is necessary to address racebacks and the horse supply.

Kim Pike testified that he did not agree that racebacks were a problem for the harness racing industry and that many years ago horses would race multiple times in one day, and multiple days in a row. He disagreed that it was necessary to take a day off from racing to

⁴ Cumberland Fair initially opposed taking a day off from racing, but partway through hearing agreed to take August 28 off from racing. Before agreeing to take a day off from racing, Cumberland Fair, via its representative, Mike Timmons, took advantage of the opportunity to cross examine Mr. Bacon, and to offer testimony regarding why it was opposed to taking a day off.

⁵ Exhibit 25 shows the racing schedules and results for the final day of racing at Fryeburg Fair in 2022. Exhibit 25 was admitted without objection at the beginning of the race date assignment hearing. It was circulated to all parties and intervenors on November 9, 2022 by Commission Staff.

address racebacks and a low horse supply. Mr. Pike testified that if the Commission were to not approve a day of racing for the Fair, he requested that day be Thursday, October 5, 2023.

C. Interstate Simulcasting

Mr. Bacon testified that both First Tracks and Bangor Raceway requested authorization to conduct interstate simulcasting and that the Commission has historically authorized this in the past. Mr. Bacon testified that First Tracks and Bangor Raceway are both commercial tracks and recommended that the Commission grant the requests.

IV. FACTS

The Commission found the following facts.

1. All of the applicants for license renewal to conduct harness racing meets with pari-mutuel pools at racetracks in the State of Maine during calendar year 2023 have requested licensure for a one-year period.
2. All of the applicants' 2023 renewal applications are complete as of November 15, 2022.
3. All of the applicants have substantially complied with the requirements of Title 8, Chapter 11 of the Maine Revised Statutes and the Commission Rules for calendar year 2022.
4. Each of the applicants, their members, directors, officers, shareholders, employees, creditors, and associates are of good moral character.
5. The applicants requesting a renewal license to hold harness horse races for meets for public exhibition with pari-mutuel pools have met the criterion established in 8 M.R.S. § 271(1) and the Commission finds that they are financially responsible.

6. All of the applicants have satisfied the relevant criteria established in Title 8, Section 271, Subsection 2 and Chapter 19, Section 4, subsection 11 of the Commission Rules.
7. Pursuant to 8 M.R.S. § 272, all of the applicants already have or will satisfy the requirement of providing a bond or irrevocable letter of credit for calendar year 2023, prior to the actual physical issuance of their respective licenses for calendar year 2023.
8. All applicants have all agreed to work with the Maine Standardbred Breeders and Owners Association to host, at their respective racing tracks, Breeder Stake's races in addition to their allocated races, for calendar year 2023.
9. First Tracks and Bangor Raceway have requested Commission authorization to transmit interstate simulcasting for the licensed race meets conducted by them. The Commission may authorize this under 8 M.R.S. § 275-N.
10. The applicants submitted their proposed race date requests which have been consolidated on a master calendar prepared by the Department as the Proposed Race Date Calendar, Exhibit 10.
11. During the hearing, some of the applicants changed their race date requests to either add or remove race dates. These changes are reflected in Exhibit B, attached to this Decision and Order.

V. DELIBERATIONS AND DECISIONS

The Commissioners considered the licensing criteria set forth in 8 M.R.S. § 271 and

Chapter 19, Section 4 of the Commission Rules; evidence presented by the parties and Commission staff; and additional evidence in the record not specifically referred to herein. The Commission deliberated and made the following decisions.

A. Licensing

The Commissioners expressed their collective opinion that all the applications have satisfied the relevant criteria for license renewal and race dates and dashes for the calendar year 2023. Accordingly, the Commissioners voted unanimously to award licenses all the applicants for the purpose of conducting pari-mutuel harness horse races for calendar year 2023. The license applications were approved upon the condition that the licenses will be issued by the Department after its receipt of all necessary information from the applicants to show that Section 272's bonding requirements will be current and met during the 2023 license year.

B. Race Dates

Regarding race dates, the Commissioners discussed whether to approve the race dates as modified during the hearing. All race dates were agreed to, with the exception of Fryeburg's request for six racing days in October. The Commission deliberated regarding whether to require Fryeburg to take a day off from racing. An initial motion to grant Fryeburg all 6 of its requested race dates failed, with four Commissioners voting against and one in favor. The Commission discussed whether other options, such as changing the number of permitted races in a day, or determining whether boxes were full on the day of the race, would sufficiently address the low horse supply in Maine and allow Fryeburg to race 6 consecutive days as requested. It was determined this would not be sufficient.

Commissioner Dunn noted that pursuant to § 271(2)(J), in setting race dates, the Commission must consider “[t]he likely availability of race-worthy horses throughout the year

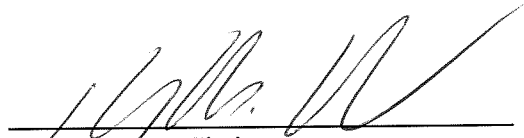
with a goal of promoting full cards and avoiding 5-horse fields” and noted that there were many 5-horse fields this year. Commissioner Norris noted that all the other fair applicants had agreed to give up a day of racing to address the low horse supply in Maine. Commissioner Center believed that taking a day off from racing by each of the fair was in the best interest of the harness racing industry. A motion to grant the race dates as amended during the hearing and to deny Fryeburg Fair Thursday, October 5, 2023 as a racing day was made and passed 4-1.⁶ The vote reflects approval of the racing days as reflected in Exhibit B.

C. Simulcast Authorization

The Commissioners unanimously voted to authorize full-card simulcasting for First Tracks and Bangor Raceway.

Dated:

12/20/2022



Harry Center, Chair
Maine State Harness Racing Commission

RIGHT OF APPEAL

Any party to these proceedings may seek review of this Decision, to the extent that review is permitted by law, by filing a petition for review in Superior Court pursuant to 5 M.R.S. § 11001, et seq., within thirty (30) days after receiving notice of this Decision.

The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested on the Maine State Harness Racing Commission, all parties to the agency proceedings and the Attorney General. Any other person aggrieved by this Decision may seek judicial review in like manner by filing a petition for review in Superior Court within forty (40) days after the date of this Decision.

⁶ Commissioner Varnum opposed.

cc: Members of the Maine State Harness Racing Commission
Shane Bacon, Executive Director
Ralph Canney, State Steward
Sagadahoc Agricultural & Horticultural Society
Skowhegan State Fair
Union Fair Society
Windsor Fair
Franklin County Agricultural Society
Cumberland Farmers Club / Cumberland Fair
West Oxford Agricultural Society / Fryeburg Fair
HC Bangor, LLC; Bangor Raceway
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