National Indian Gaming Commission

NOTICE OF PROPOSED CIVIL FINE ASSESSMENT

Ref: CFA-05-05

To: Barry E. Snyder, Sr., President
Seneca Nation of Indians
G.R. Plummer Bldg.
P.O. Box 231
Salamanca, NY 14779

1. Under the authority of 25 U.S.C. § 2713 (a), of the Indian Gaming Regulatory Act (IGRA), and the regulations of the National Indian Gaming Commission (NIGC) at C.F.R. § 575,), the Chairman of the NIGC hereby provides notice of his intent to assess a civil fine against the Seminole Nation of Indians, Salamanca, New York (Respondent), for violations of 25 C.F.R. §§ 514.1(c) as set forth in detail in Notice of Violation No. NOV 05-05, issued on February 17, 2005, a copy of which is attached hereto (Exhibit 1). NOV 05-05 was issued for failure to submit quarterly statements and fee payments in a timely manner for Seneca Allegeny Bingo and Seneca Cattaraugus Bingo.

2. Pursuant to 25 U.S.C. § 2713 (a) and 25 C.F.R. § 575.4, the Chairman of the NIGC may assess a civil fine, not to exceed $25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each violation cited in a notice of violation issued under 25 C.F.R. § 573.3. If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation. 25 C.F.R. § 575.4 (a)(2).

3. The NIGC regulations at 25 C.F.R. § 575.5 provide that, within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine. Respondent did not submit any information under 25 C.F.R. § 575.5 about the violation.

4. The Chairman has considered the factors set forth in 25 C.F.R. § 575.4, as follows:

   i. Economic benefit of noncompliance. Respondent has obtained a limited economic benefit from its failure to submit quarterly statements and fees in a timely fashion, resulting from its ability to collect interest on the unpaid fees. Seneca Allegeny Bingo's submissions were received on January 27, 2005, 27

days late. Seneca Cattaraugus Bingo's submissions were received on February 25, 2005, 56 days late.

ii. Seriousness of the violation. NIGC operations are funded entirely from the annual fees it receives from gaming tribes; therefore, the prompt payment of such fees is of critical importance to the NIGC. The annual fees collected by the NIGC are based upon the quarterly worksheets submitted by Indian gaming operations. NIGC must set a fee rate sufficient to fund its annual budget, yet may not exceed the fee cap set by Congress. Thus, it is also imperative that the NIGC receive worksheets from the gaming operations in a timely manner so that the NIGC is able to set accurate preliminary and final fee rates.

ii. History of violations. The Chairman has issued the following Notice of Violation to Respondent within the last five years for operation of illegal Class III gaming:

a. Notice of Violation No. NOV-02-04, May 30, 2002, for operating pull-tabs in two tribally-owned facilities where bingo was not offered for play. Pull-tabs only constitutes a class II game if bingo if played in the same location as bingo. 25 U.S.C. § 2703(7)(A)(i)(III). Because Respondent does not have a compact with the State of New York that authorizes Class III gaming at these facilities, Respondent was operating class III pull-tab games in the absence of a tribal-state compact in violation of 25 U.S.C. § 2710(d) and 25 C.F.R. § 573.6(a)(11).

iii. Negligence or willfulness. The Tribe was aware of the quarterly statement and fee payment due date, yet failed to turn in the submissions for the quarter ending December 31, 2004, in a timely manner. On December 20, 2004, the NIGC issued a warning notice to the Tribe regarding its failure to meet payment and submission deadlines for the quarterly statements and fee payments and advising that the NIGC might initiate enforcement action to address the violations (Exhibit 2). Respondent replied to this notice with a letter indicating that it was aware of the problem and its intent to punctually comply (Exhibit 3). Respondent's late submission of the quarterly statements and fee payments for Seneca Allegeny Bingo and Seneca Cattaraugus Bingo for the quarter ending December 31, 2004, were therefore willful rather than negligent.

iv. Good faith. Respondent submitted its quarterly statement and fee payment for Seneca Allegeny Bingo on January 27, 2005, before NOV 05-05 was issued. NOV 05-05 was issued on February 17, 2005, and Respondent submitted Seneca Cattaraugus Bingo on February 25, 2005. The quick submission of Seneca Cattaraugus Bingo's documents shows a good faith attempt to rectify the failure to submit. This does not, however, excuse the late remission of quarterly statements and fee payments for both facilities.

5. WHEREFORE, the Chairman, having carefully reviewed the above factors, has determined that a fine in the amount of $4,000 (four thousand dollars) is assessed on the

Respondent for failure to submit timely quarterly statements and fee payments for Seneca Allegeny Bingo and Seneca Cattaraugus Bingo for the quarter ending December 31, 2004.

6. Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date. 31 U.S.C. § 3717.

7. The above-described amount represent an appropriate balancing of the other factors cited above.

8. Pursuant to 25 C.F.R. § 577.3, within 30 (thirty) days after service of this Notice of Proposed Civil Fine Assessment, Respondent may appeal the proposed fine to the full Commission by submitting a notice of appeal to the National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005. Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must identify this Notice of Proposed Civil Fine Assessment. Within ten (10) days after filing a notice of appeal, Respondent must file with the Commission a supplemental statement that sets forth with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If Respondent wishes to present oral testimony or witnesses at the hearing, Respondent must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. Respondent may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

Dated this ___day of April 2005.

Philip N. Hogen
Chairman

Andrea Lord
Staff Attorney
202-632-7003