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October 31, 2008

VIA FEDERAL EXPRESS

Mickey Kane
Secretary
Pennsylvania Gaming Control Board
303 Walnut Street
P.O. Box 69060
Harrisburg, PA 17106-9060

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Attn: Public Comment on Rulemaking #125-93

RE: Comments to Proposed Rulemaking #125-93

Dear Ms. Kane:

Greenwood Gaming and Entertainment, Inc. ("GGE") is the holder of a Category 1 slot machine license which authorizes GGE to operate Philadelphia Park Casino ("PPC") in Bensalem, Pennsylvania. GGE respectfully submits the following comments to the Pennsylvania Gaming Control Board (the "Board") in connection with the Board's proposed rulemaking, as captioned above, which was published in the *Pennsylvania Bulletin* at 38 Pa.B. 5441, on October 4, 2008.

The proposed rulemaking at issue is an omnibus rulemaking, which proposes various changes to the Board's existing regulations governing the Rules of Practice and Procedure before the Board. Most of the proposed changes to the regulations are minor and appear to be well-conceived regulatory revisions. In particular, GGE strongly endorses the proposed revision to 58 Pa. Code 497a.1, which would allow documents to be filed with Board via an electronic transmission. An electronic filing system should add efficiency to the Board's administrative proceedings and reduce the costs to parties appearing before the Board. However, GGE must object to proposed regulation 58 Pa. Code 493a.10a.

Proposed section 493a.10a attempts to change the method of protecting confidential information submitted to the Board. In fact, the proposed regulation attempts to switch the burden of protecting confidential information from the Board to the filing parties (e.g., licensees), which is in direct opposition to the Board's enabling statute, the Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S. §§ 1101 *et seq.* (the "Gaming Act"). As such, proposed section 493a.10a would likely expose statutorily protected confidential information to illegal disclosure. Moreover, the proposed regulation would detract from the Board's efficiency by ensuring that all pleadings and other filings would be accompanied by a protective motion. In turn, this would create a substantial and unjustifiable negative fiscal impact on the Pennsylvania gaming industry by increasing (i) the licensees' costs associated with filing pleadings and (ii) the Board's internal costs associated with

administering and reviewing the various protective motions. Finally, the proposed regulation is unclear regarding certain terms and the intended scope of its provisions. Accordingly, the Board should omit proposed section 58 Pa. Code 493a.10a from Final Rulemaking #125-93 and maintain the existing procedures for protecting confidential information, which is compliant with the Board's enabling statute.

The Gaming Act reflects a presumption that information submitted to the Board is confidential. Specifically, the Gaming Act provides that "[a]ll information submitted by an applicant pursuant to section 1310(a) (relating to slot machine license application character requirements) or obtained by the Board or the bureau as part of a background investigation from any source shall be considered confidential." 4 Pa. C.S. § 1206(f). The Board's current procedures governing the protection of confidential information are located at 58 Pa. Code 407a.3, which defines and details the categories of information designated as "confidential." For any submission or filing to the Board, the licensee would label any protected documents and/or information as "confidential" or "proprietary." Pursuant to its statutory duties at 4 Pa. C.S. §§ 1206(f) and 1207(2), the Board protects the documents and/or information designated confidential from disclosure. The Board may not disclose such confidential documents and/or information to the public, unless either (1) the applicant requests disclosure of the information or (2) the applicant's actions make the information part of the public domain. 58 Pa. Code 407a.3(b)(2)(i)-(ii).

GGE is unaware of any reason to modify the current procedures. From its perspective, the preceding process has worked well in implementing the Board's statutory duty to protect confidential information. Nevertheless, the Board, without explanation or reason, now proposes modifying this process by requiring a party seeking to protect confidential information "in pleadings and other papers" to file a "Motion to Protect Confidential Information" with a legal justification for its request. Under the proposed regulation, the Board's Director of Hearings and Appeals would review the protective motion to determine if confidentiality should be accorded during the associated administrative process. The proposed procedures are not only unnecessary and unreasonable, but they also create unjustified negative fiscal impact on the Pennsylvania gaming industry during a global recession.

The Gaming Act imposes on the Board an affirmative duty and an ongoing obligation to protect confidential information of licensees from improper disclosure. See 4 Pa. C.S. §§ 1206(f), 1207(2). Under the proposed regulation, this duty and obligation would be placed on the filing party (e.g., licensee) by requiring it to file a protective motion with each and every "pleadings and other papers" seeking protection of its confidential information. The proposed regulation is unreasonable because it is ineffective in meeting the Board's affirmative duties and obligations to protect confidential information as assigned by section 1206(f) and section 1207(2) of the Gaming Act. Moreover, the proposed regulation will not increase the Board's efficiency in reviewing, processing and administering administrative matters. In fact, proposed section 493a.10a would create significant inefficiency at the Board because the Director of Hearings and Appeals will be flooded by numerous Protective Motions. Each "pleading and other papers" submitted to the Board would most likely include a Protective Motion that will cause a lengthy time delay between filing of that motion and adjudication of the confidentiality issue. As such, the proposed regulation is unreasonable and should be omitted from Final Rulemaking #125-93.

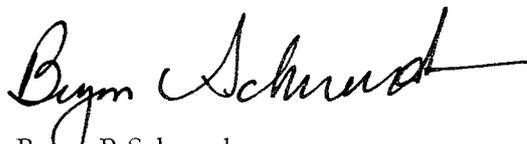
In addition to the unreasonable impact of the proposed regulation, the regulation would cause an unjustified negative fiscal impact by increasing (i) the licensees' costs associated with filing pleadings and (ii) the Board's internal costs associated with administering and reviewing the various protective motions. Undoubtedly, the regulation would impose additional cost on filing parties (e.g., licensees) by requiring its attorneys to prepare a protective motion for nearly every submission to the Board. The overall cost of said legal fees will be substantial. Furthermore, the Board will likely be flooded with these protective motions, which will result in significant, additional administrative expenses to review and decide each motion. This fiscal impact is unjustified during a global recession because it does not result in any identifiable benefit. Under the Board's current process for protecting confidential information, the information is protected without the need for these motions. The Board's proposal to replace these efficient and effective procedures with inefficient procedures is unjustified and Section 493a.10a should be omitted from Final Rulemaking #125-93.

Finally, proposed section 493a.10a lacks clarity as to its application. For example, it is completely unclear what the Board means by "pleadings and other papers." Furthermore, the regulation is not specific as to how designated information will be treated during the pendency of the Board's review of a protective motion. Accordingly, if a person or other party seeks production or disclosure of such information prior to a decision by the Director of Hearings and Appeals, it is completely unclear whether or not the Board will release the information. As such, the Board risks violating its own enabling statute—4 Pa. C.S. §§ 1206(f) and 1207(2)—and its own regulation—58 Pa Code § 407.3—with the illegal disclosure of confidential information.

GGE strenuously objects to this proposed rulemaking because the proposed regulation is unnecessary and unreasonable, as well as, a substantial and unjustifiable negative fiscal impact on the Pennsylvania gaming industry. Accordingly, the Board should omit proposed section 58 Pa. Code 493a.10a from Final Rulemaking #125-93 and maintain the existing procedures for protecting confidential information, which is compliant with the Board's enabling statute.

Thank you for considering the comments of GGE in connection with the proposed regulation. GGE will be happy to answer any questions that the Board may have on these comments.

Respectfully submitted,



Bryan P. Schroeder
Assistant General Counsel
Greenwood Gaming & Entertainment, Inc.

bps

cc: Arthur Cocodrilli, Independent Regulatory Review Commission (via Federal Express)