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September 28, 2009

The Honorable Arthur Coccodrilli, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

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Re: Final-form Rulemaking #125-102

Dear Chairman Coccodrilli:

In meeting with your staff last week on Final-form Rulemaking #125-102, it was suggested that a letter be sent to the Commission in response to comments it received on September 21, 2009 from counsel for Greenwood Gaming and Entertainment, Inc. (Greenwood Gaming) and Downs Racing, LP (Downs). As you know, this Final-form Rulemaking would expand the definition of "key employee" found in Title 58 PA. Code § 401a.3 (relating to definitions) to add to the positions within a slot machine licensee's management that would be required to obtain a key employee license. The changes to the existing regulation are based on the experience gained from reviewing the operations of the nine operating licensed facilities.

In its letter, counsel for Greenwood Gaming and Downs assert that this Final-form Rulemaking unnecessarily expands the list of individuals who are required to be key employees. Most of the new positions that would require licensing, however, are required by the Pennsylvania Race Horse Development and Gaming Act (Act). The definition of "key employee" in the Act reads as follows:

Any individual who is employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot machine operations, including the general manager and assistant manager of the licensed facility, director of slot operations, director of cage and/or credit operations, director of surveillance, director of marketing, director of management information systems, director of security, comptroller **and any employee who supervises the operations of these departments** or to whom these department directors or department heads report **and such other positions which the Pennsylvania Gaming Control Board shall determine based on detailed analyses of job descriptions** as provided in the internal controls of the licensee as approved by the board. All other gaming employees, unless otherwise designated by the board, shall be classified as non-key employees.
4 PA.C.S. § 1103.

The individuals listed in (ii)(A) through (O) of the Final-form Rulemaking are department heads and are empowered to make discretionary decisions that directly relate to slot machine operations. Therefore, the Act requires that they be licensed. Because casinos in Pennsylvania are in operation 24 hours a day, the shift managers listed in (iii)(A) through (E) supervise the operations of these departments when those department heads are not present. Again, the Act requires that these individuals be licensed as key employees. Therefore, the changes made in this Final-form Rulemaking with respect to these employees are not a “dramatic expansion,” but a clarification of the regulatory definition of “key employee” required by the Act. Most of the individuals enumerated are already licensed as key employees at the nine currently operating licensed facilities.

With regard to paragraph (vi) of the Final-form Rulemaking, counsel for Greenwood Gaming and Downs argues that individuals who are authorized to issue \$100 or more of credits for free slots play do not need to be licensed as key employees. The Act, however, gives the Pennsylvania Gaming Control Board the authority to license those individuals it determines to be necessary based on the duties they perform for the licensed facility.

Since free slots play is considered a promotional expense for the licensed facilities, the amount of credit given out by the facility is deducted from its gross terminal revenue. Gross terminal revenue is the figure on which the facility’s tax liability to the Commonwealth is calculated. Because of the impact this practice has on tax revenue, the Board, through its Bureau of Licensing, has made the determination that it is in the public interest that employees who have the discretion to award significant amounts of free slots play to patrons should undergo the heightened scrutiny subjected to applicants for key employee licenses. Having these employees licensed as key employees will reduce the potential for abuse and fraud in the award of these credits and help to protect the integrity of gaming operations in Pennsylvania. Moreover, our discussions with the licensed facilities currently operating indicate that, should Final-Form Rulemaking #125-102 take effect, those facilities will simply establish procedures that utilize existing key employees in the award of free slots play, rather than having additional employees so licensed.

Finally, counsel for Greenwood Gaming and Downs objects to submitting the licensee’s internal controls for the issuance of complimentary services to the Board for approval. The existing regulation requires slot machine licensees to develop and maintain these internal controls, but does not require them to be approved by the Board. The only change being made by the Final-form Rulemaking is that now these existing internal controls will be reviewed and approved by the Board. The Board did not initially require these internal controls to be approved because it underestimated the amount of complimentary services that would be awarded by the slot machine licensees to their patrons. Based on the Board’s experience, however, it is evident that the award of complimentary services is extensive, and therefore the internal controls the licensees maintain to control the practice should be subject to Board review. Since slot machine licensees already have these internal controls in place, their submission to the Board should not be overly burdensome, and their review by the Board is in the public interest.

I hope this response to the comments submitted by counsel for Greenwood Gaming and Downs is helpful to the Commission in its consideration of Final-form Rulemaking #125-102, and I urge its approval.

Sincerely,

A handwritten signature in black ink, appearing to read 'Troy L. Beaverson', with a long horizontal flourish extending to the right.

Troy L. Beaverson
Assistant Chief Counsel

cc: The Honorable George D. Bedwick, Vice Chairman.
The Honorable Silvan B. Lukewitte III, Commissioner
The Honorable John F. Mizner, Commissioner
The Honorable David Fineman, Commissioner.