



Seneca Cayuga Tribe of Oklahoma  
Gaming Commission  
23701 S. 655 Rd  
Grove, OK 74344  
918-787-9703

October 30, 2012

Ms. Tracie L. Stevens, Chairwoman  
National Indian Gaming Commission  
1441 L St. NW, Suite 9100  
Washington, DC 20005

Re: Comments on the NIGC's Draft Strategic Plan for Fiscal Years 2014-2018

Dear Chairwoman Stevens:

The Seneca-Cayuga Gaming Commission (SCGC) submits the following comments in response to the National Indian Gaming Commission's (NIGC) request for tribal input on its draft Strategic Plan for fiscal years 2014-2018. The draft Strategic Plan sets forth the framework within which the NIGC will perform the regulatory functions prescribed to it under the Indian Gaming Regulatory Act (IGRA). It lays out the approaches and strategies that the NIGC will undertake in implementing the primary purposes of IGRA, namely, the advancement of tribal economic development, self-sufficiency, and strong tribal governments. In light of the purposes of IGRA and the unique system of shared regulatory responsibility established under it, these approaches and strategies should be crafted in a manner that encourages tribal governments' efforts to develop and use their institutions, processes, and skills to the maximum extent possible.

With this in mind, the SCGC is pleased that the draft Strategic Plan endeavors to set a regulatory course that defers to the primary regulatory authority of tribal governments in resolving any potential compliance issues. This is perhaps best reflected in Goal 1 of the draft Strategic Plan, which clarifies that enforcement actions will only be taken after tribal governments have been given notice and an opportunity to address the actual or potential compliance issue in accordance with their own laws, regulations, and regulatory practices. We are encouraged that the draft Strategic Plan accounts for the sophistication of many tribal gaming regulatory agencies and aims to strengthen tribal internal capacities and capabilities for regulation.

The SCGC is especially pleased by the NIGC's commitment to adopt a voluntary compliance approach that "prevents foreseeable problems through effective communication, training and technical assistance, and compliance efforts." We agree that the initiation of an adversarial proceeding is not necessarily the most effective means of securing compliance, as it can potentially foreclose opportunities for dialogue, cooperation, and collaboration and undermine the NIGC's government-to-government relationship with tribal governments.



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On the other hand, a voluntary compliance approach based on dialogue, cooperation, and collaboration, such as the one described in the draft Strategic Plan, can strengthen relationships and foster an environment conducive to joint problem-solving. We therefore believe that this approach is not only more appropriate to the intergovernmental nature of the relationship between the NIGC and tribal governments, but also more consistent with the NIGC's functions as a civil regulatory agency whose purpose is to effect compliance.

By and large, we generally support the goals and strategies set out in the draft Strategic Plan. Nevertheless, we wish to bring to the NIGC's attention a few remaining issues in the draft that we believe would benefit from the NIGC's further review.

To begin, with respect to the goal of improving and updating the NIGC's regulations, we believe that rulemakings should involve the use of performance-based standards and collaborative rulemaking processes whenever possible. In Executive Order 13563, President Obama directed all federal agencies "to specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt," whenever possible. Furthermore, the NIGC's own draft Consultation Policy states that it "will encourage Tribes to develop their own policies to achieve program objectives, and, when possible, defer to Tribes to establish their own standards." In the tribal gaming context, a performance-based regulatory approach provides tribal governments the necessary flexibility to tailor their operational policies and procedures to the size, scale, and scope of their gaming operations in a manner consistent with the organizational structure of the gaming enterprise. It also enables the NIGC to continue carrying out its regulatory oversight functions without compromising or infringing upon tribal sovereignty.

In addition to performance-based standards, we believe the draft Strategic Plan should also include a discussion on the use of collaborative mechanisms such as tribal advisory committees (TACs) during the rulemaking process. Of the fifteen tribal representatives who were selected to serve on the TAC to review the Class II regulations, approximately twelve held leadership positions at their respective tribal gaming regulatory agencies. The strong presence of tribal gaming regulatory agency representatives on the TAC reflects the recognition that tribal regulators have a deep understanding of the relevant issues and implications involved and are thus well-positioned to provide valuable input during the rulemaking process. They possess a great depth of experience and knowledge regarding the gaming industry generally and tribal gaming operations specifically, and can therefore provide useful feedback as to the practical considerations of regulatory proposals. Such feedback can become critically important when reviewing more complex and technical regulations that call for subject-matter expertise in a particular area of gaming.



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Another concern that should be addressed relates to the performance measures stated in the draft Strategic Plan, several of which focus primarily on the NIGC's performance instead of the measurement of such performance. The key objective of including performance measures in a Strategic Plan is to provide a means of assessing an agency's progress in achieving its strategic goals. In order to do so, they must be framed in a manner that lends itself to easy quantification.

It appears, however, that several of the performance measures fall short of this requirement. For instance, under the goal of improving consultation, communication and relationship building with tribal, federal, and state regulatory authorities and/or agencies, the draft Strategic Plan lists "conduct[ing] tribal consultation in conjunction with national and widely attended meetings to conserve tribal and Agency resources" as one of the goal's performance measures. Conducting tribal consultations, however, is not an indicator or measurement of consultation, but more appropriate as a strategy to fulfill the goal of improving consultation. A similar problem exists for the following performance measure listed under this same goal: "regularly inform tribes of Agency financial resources (Gross Gaming Revenue, Agency Budget, etc.)." Without more, this performance measure provides little to no insight as to whether the strategy of implementing the Open Government Initiative and improving the NIGC website has, in fact, been effective in achieving the intended goal.

In closing, the SCGC wishes to express its appreciation for this opportunity to comment on the NIGC's draft Strategic Plan. As the NIGC moves forward in finalizing its Strategic Plan, we hope it will give favorable consideration to the comments we have raised above.

Sincerely,

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Richard Wood  
Gaming Commissioner  
Seneca-Cayuga Gaming Commission