

NATIONAL INDIAN GAMING COMMISSION

SETTLEMENT AGREEMENT

SA-19-03

INTRODUCTION

This settlement agreement (Agreement) is entered into by and between the Peoria Tribe of Indians of Oklahoma (Tribe) through its duly authorized representatives and the Chairman of the National Indian Gaming Commission (NIGC or Commission) to resolve violations described in Notice of Violation 19-03 (NOV-19-03) issued to the Tribe and to resolve the Tribe's appeal of NOV-19-03.

RECITALS

1. Whereas, pursuant to IGRA and NIGC regulations, the NIGC Chairman (Chairman) may issue a Notice of Violation (NOV) to any person for violation(s) of any provision of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman.¹
2. Whereas, pursuant to IGRA and NIGC regulations, the Chairman has authority to levy and collect appropriate civil fines, not to exceed \$53,524, against a tribe, a management contractor, or an individual operating Indian gaming for any violation of any provision of IGRA and NIGC regulations.² If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.³
3. Whereas, IGRA provides that an Indian tribe may enter into a management contract for the operation of a Class II or Class III gaming activity if such contract has been submitted to, and approved by, the Chairman.⁴
4. Whereas, management contracts and amendments to management contracts that have not been approved by the Chairman are void.⁵

¹ 25 U.S.C. § 2713; 25 C.F.R. § 573.3.

² 25 U.S.C. § 2713(a)(1); 25 C.F.R. § 575.4; Annual Adjustment of Civil Monetary Penalty to Reflect Inflation, 85 Fed. Reg. 8395 (Feb. 14, 2020).

³ 25 C.F.R. § 575.4(a)(2)

⁴ 25 U.S.C. § 2710(d)(9); 25 U.S.C. § 2711(a)(1).

⁵ 25 C.F.R. § 533.7.

5. Whereas, NIGC regulations provide that a tribe may enter into a modification of a management contract for the operation of a Class II or Class III gaming activity, subject to the approval of the Chairman.⁶
6. Whereas, NIGC regulations require that a tribe submit a modification of a management contract for the operation of a Class II or Class III gaming activity to the Chairman within 30 days of execution.⁷
7. Whereas, NIGC regulations require that if the modification or amendment involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) and the information required under §537.1(b)(1) of NIGC regulations must be submitted to the Chairman for review.⁸
8. Whereas, any amendments to a management contract for the operation of a Class II or Class III gaming activity that have not been approved by the Chairman are void.⁹
9. Whereas, NIGC regulations provide that it is a substantial violation of IGRA for a management contractor to manage an Indian gaming operation without a contract that the Chairman has approved under Part 533.¹⁰
10. Whereas, IGRA, NIGC regulations, and the Tribe's gaming ordinance specify that net gaming revenue from Class II and Class III operations may only be used for the following purposes: (1) to fund tribal government operations and programs; (2) to provide for the general welfare of the Indian tribe and its members; (3) to promote tribal economic development; (4) to donate to charitable organizations; and (5) to help fund operations of local government agencies.¹¹
11. Whereas, on May 10, 2019, Chairman Chaudhuri issued NOV-19-03, in which he gave notice to the Tribe that it was in violation of IGRA, NIGC regulations, and its tribal gaming ordinance, because the tribe operated under an unapproved amendment to its Management Agreement with Direct Enterprise Development, LLC (DED) and used net gaming revenue for purposes other than those permitted by IGRA, NIGC regulations, and the Tribe's approved gaming ordinance.
12. Whereas, the NOV-19-03 was not preceded by a Letter of Concern under 25 C.F.R. §573.2, in part, because the misuses of Net Gaming Revenue at issue were primarily the result of actions by the principals of DED, who no longer managed the Buffalo Run Casino since its management agreement with the Peoria Tribe was no longer in effect.

⁶ 25 C.F.R. § 535.1(a).

⁷ 25 C.F.R. § 535.1(b).

⁸ 25 C.F.R. § 535.1(c)(4)(i).

⁹ 25 C.F.R. § 535.1(f).

¹⁰ 25 C.F.R. § 573.4(a)(7).

¹¹ 25 U.S.C. §§ 2710(b)(2)(B) and 2710(d)(1)(A)(ii); 25 C.F.R. § 522.4(b)(2) and 522.6(b); Peoria Tribe of Indians of Oklahoma Gaming Ordinance, § 16.1.

13. Whereas, the Tribe timely appealed the Notice of Violation.
14. Whereas, the Chairman and the Tribe desire to resolve the issues relating to the Notice of Violation.
15. Therefore, the Chairman and the Tribe have agreed to execute this Agreement and perform in accordance with the following terms:

STIPULATIONS

16. For the purpose of resolving the issues related to NOV-19-03, the Peoria Tribe neither contests nor admits NIGC's jurisdiction over this matter nor the Chairman's authority to issue a civil fine assessment.¹²
17. The Peoria Tribe acknowledges that it is responsible for ensuring compliance with IGRA and NIGC regulations, including: responsibility for the conduct of its gaming operation; adherence to IGRA's permitted uses of net revenue; and ensuring that management contracts, including amendments, are properly approved.
18. The Peoria Tribe admits that Net Gaming Revenue was misused, because depreciation was not properly deducted in determining the management fees owed to DED, as described in NOV-19-03.
19. The Peoria Tribe admits that the Casino operated under an unapproved management agreement, as described in NOV-19-03.
20. The Peoria Tribe admits that Net Gaming Revenue was misused when management fees were advanced to personal accounts of DED officials before monthly distributions were made to the Peoria Tribe, and when advances to other third parties, not authorized in the management agreement, as described in NOV-19-03 were executed.
21. The Peoria Tribe is ultimately responsible for ensuring compliance with IGRA, NIGC regulations, and its Gaming Ordinance. The Tribe and DED were put on notice of issues regarding the calculation of the management fee during the initial contract review. However, the NIGC recognized in NOV-19-03 that the violations were primarily the result of actions by Direct Enterprise Development (DED) principals. The Peoria Tribe has taken action to remedy the conditions which permitted the violations and the resulting damage to the Peoria Tribe by (1) investigating the conduct of DED; holding Peoria Tribal Gaming Commission hearings resulting in permanent revocation of the gaming licenses of David Qualls and Tony Holden, and issuing a fine against them in the amount of the excess management fees; (2) defending the jurisdiction of the Peoria Tribal Gaming Commission over Qualls and Holden and seeking recovery of attorney fees, costs and expenses related to gaming license discipline and enforcement; and (3) by filing lawsuits to recover the excess management fees, and other damages. Those

¹² 25 C.F.R. Part 575

proceedings are ongoing at this time, and the Tribe intends to pursue them to verdict, final judgment or agreed settlement.

TERMS OF SETTLEMENT

22. Having carefully reviewed all information surrounding the violation, the mitigation circumstances, and the Peoria Tribe's diligent efforts to make itself whole through Peoria Tribal Gaming Commission proceedings and civil litigation, the Chairman agrees to waive the assessment of all fines, except as provided in paragraph 24 and 25, on the condition that the Peoria Tribe successfully complies with the Conditions of this Agreement for a period of two years from the Effective Date of this Agreement. Those Conditions are set forth below.
23. NOV-19-03 identifies 77 violations of IGRA and NIGC regulations. For the 77 violations, the Peoria Tribe acknowledges that the Chairman could assess a civil fine in the amount of \$4,121,348. The Peoria Tribe acknowledges that some of these violations spanned the period from 2008-2018 and that the Chairman could treat each daily act or omission as a separate violation for purposes of civil fine assessment resulting in a significantly larger civil fine.¹³
24. Of the \$4,121,348.00 in civil fines that could be assessed, the Peoria Tribe agrees to pay, and the Chairman agrees to accept, the amount of \$53,524 to fully resolve NIGC-NOV-19-03, payable to the United States Treasury and delivered to the NIGC, at 1849 C Street, N.W., Mail Stop # 1621, Washington, D.C. 20240, subject to the conditions set forth in paragraph 25. In accordance with the provisions of paragraph 25 hereof, \$26,762 is due within 30 days of the Effective date.
25. The Chairman agrees to suspend \$26,762 of the civil fine (Suspended Fine) pending the Peoria Tribe's adherence to the terms of this Agreement. In the event that the Chairman determines that the Peoria Tribe has failed to meet the Conditions of this Agreement during the two-year period, then the Peoria Tribe shall pay the Suspended Fine within 30 days of receipt of such notice from the Chairman. The civil fine must be payable to the U.S. Treasury, and shall be delivered to the NIGC at 1849 C Street, N.W., Mail Stop #1621, Washington, D.C. 20240.
26. The Chairman waives the right to impose any further civil fine against the Peoria Tribe relating to the violations described in NOV-19-03.
27. The Tribe waives all rights to pursue an appeal of NOV-19-03 before the Commission, waives all rights to pursue an appeal to a presiding official, and waives all rights to judicial review of such proceedings.
28. The Tribe waives all rights to pursue administrative or judicial review of this Agreement.

¹³ 25 C.F.R. § 575.4(a)(2)

CONDITIONS

29. Within three (3) months of the Effective Date of this Agreement, the Peoria Tribe will institute the practices described below, which will be adhered to during the term of this Agreement. The Peoria Tribe will provide written notice to the Chairman by November 1, 2020, July 1, 2021, and July 1, 2022 detailing the specific steps taken to maintain compliance with the following requirements:
- (A) All members of the Peoria Tribe Business Committee, the Audit Committee of the Business Committee, the Peoria Tribal Gaming Commission, and employees of the Casino and Peoria Tribe holding positions of responsibility for financial policy and accounting procedures, shall receive, on at least an annual basis, training in reading and understanding financial statements and balance sheets, especially in regard to determining Net Gaming Revenues. In the first year of the term of this Agreement, the Tribe may satisfy this requirement by completing the training specified in paragraph 30(D).
 - (B) The Peoria Tribe Business Committee will receive monthly reports on gaming activities, including monthly financial statements and balance sheets (unaudited) from the casino.
 - (C) The Peoria Tribe Business Committee will engage an independent outside accountant to prepare on an annual basis audited annual financial statements and balance sheets of all Casino gaming activity for the preceding fiscal year (end as of March 31 each year).
30. The Peoria Tribe will work with the NIGC Tulsa Regional Director, or his designee, to schedule training intended to provide an overview of IGRA and NIGC regulations, internal controls, and audit and accounting issues. All training will be completed within one year of the Effective Date of this Agreement. Such training will include at least the following courses offered by NIGC staff:
- (A) IT-108 – IT Threats for Casinos (approx. 2 hours), to be attended by Peoria Tribal Gaming Commission (PTGC) Commissioners, PTGC Executive Director, PTGC Audit Manager and staff, casino General Manager, and casino IT and Audit managers.
 - (B) CMP-100 – Introduction to NIGC (approx. 1 hour), to be attended by PTGC Commissioners, PTGC Executive staff, PTGC managers, casino General Manager and relevant managers, and all Business Committee members.
 - (C) CMP-104 – Tribal Gaming Commissioners Duties and Responsibilities, (approx. 4 hours), to be attended by PTGC Commissioners, PTGC Executive Director, PTGC managers, casino General Manager, casino Audit Manager, and Business Committee members.

(D)How to Read Financial Statements (approx. 2 hours) attended by PTGC Commissioners, PTGC Executive Director, PTGC Audit Manager and audit staff, and all Business Committee members.

TERM OF THE AGREEMENT

31. This Agreement is intended to terminate in 24 months from the Effective Date, subject to the fulfillment of all Conditions of this Agreement by the Peoria Tribe. The Chairman, or his designee, will provide the Tribe with written confirmation terminating this Agreement once all Conditions have been satisfied.

ADDITIONAL COVENANTS

32. This Agreement shall become effective on the date it is signed by all parties (Effective Date). A signature produced by facsimile/or electronic signature shall be deemed to be an original signature and shall be effective and binding for purpose of the Agreement.

33. This Agreement is entered into pursuant to 25 C.F.R. § 573.5(b), and shall be deemed a final order of the Commission, and final agency action pursuant to 25 C.F.R. § 573.5(b).

34. This Agreement does not prevent the Chairman from issuing notices of violation and other enforcement actions for other violations of IGRA, NIGC regulations, and/or the Peoria Tribe's gaming ordinance.

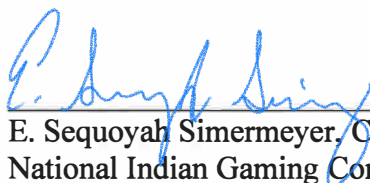
35. This Agreement constitutes the entire agreement between the Chairman and the Peoria Tribe relating to NOV 19-03 and supersedes all prior verbal or written agreements and understandings between the parties. No Warranties, representations, covenants, or agreements shall be binding upon any party except as set forth herein. Any modification or waiver of any term of this Agreement must be in writing and signed by both parties.

36. The Chairman and the Peoria Tribe expressly agree and acknowledge that time is of the essence in this Agreement.

37. This Agreement shall be binding upon the parties, their agents, heirs, personal representatives, successors and assigns.

38. This Agreement may be executed in one more counterparts and each shall constitute an original. A signature produced by facsimile shall be deemed to be an original signature and shall be effective and binding for purposes of this Agreement.

Dated this 17th day of October, 2020.



E. Sequoyah Simermeyer, Chairman
National Indian Gaming Commission



Craig Harper, Chief
Peoria Tribe of Indians of Oklahoma