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Via Email and Hand Delivery

R. Douglas Sherman, Chief Counsel
PA Gaming Control Board
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10th Floor, Commonwealth Tower
Harrisburg, PA 17101

Laura R. Burd, Senior Counsel
Pennsylvania Gaming Control Board
303 Walnut Street, Strawberry Square
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RE: Comments on Video Gaming Temporary Regulations (#125-211)

Dear Mr. Sherman and Ms. Burd:

Greenwood Gaming and Entertainment, Inc. (“GGE”) respectfully submits this correspondence in order to share our position on two issues raised in the Board’s temporary regulations on video gaming. Our discussion herein is limited to the criteria for eligible truck stops and the restrictions imposed on terminal operator investments in video gaming related additions and renovations to establishments.

I. *The Board Should Maintain in its Temporary Regulations its Definition of “Commercial Motor Vehicle” and its Appropriate Clarification on the Requirement for a Truck Stop Establishment Seeking to Offer Video Gaming Terminals to Have Parking Spaces Dedicated for Commercial Motor Vehicles*

We urge the Board to disregard requests to expand the establishments eligible to offer video gaming terminals in this Commonwealth. As discussed herein, GGE supports the Board’s current definition of “commercial motor vehicle” and its guidance on the criteria for an establishment to have “parking spaces dedicated for commercial motor vehicles.”

Act 42 of 2017 (the “Act”) defines a “truck stop establishment” as a premises that:

- (1) Is equipped with diesel islands used for fueling commercial motor vehicles.
- (2) Has sold on average 50,000 gallons of diesel or biodiesel fuel each month for the previous 12 months or is projected to sell an average of 50,000 gallons of diesel or biodiesel fuel each month for the next 12 months.
- (3) Has at least 20 parking spaces dedicated for commercial motor vehicles.

- (4) Has a convenience store.
- (5) Is situated on a parcel of land of not less than three acres that the truck stop establishment owns or leases.
- (6) Is not located on any property owned by the Pennsylvania Turnpike.

4 Pa.C.S. § 3102. The Board's temporary regulations appropriately clarify how the term "commercial motor vehicle" should be interpreted. The Board relies on the definition of a "commercial motor vehicle" as defined in the Uniform Commercial Driver's License Act ("UCDL Act"), 75 Pa.C.S. § 1603. The UCDL Act defines a "commercial motor vehicle" to include, in pertinent part, a motor vehicle that has "a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds..." or if the vehicle has "a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater...."¹

The Board clarified in its temporary regulations the criteria for a truck stop establishment to meet the requirement for "20 parking spaces dedicated for commercial motor vehicles."² The Board explained that "'parking spaces dedicated for commercial motor vehicles' must be of sufficient size to accommodate vehicles which are 8 feet in width and 53 feet in length or which otherwise have a gross combination weight rating or gross combination weight of 26,000 pounds inclusive of a tow unit with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater."³ The Board's explanation aligns its criteria for eligible truck stops establishments with the UCDL Act definition of "commercial motor vehicle."

GGE supports the Board's definition of "commercial motor vehicle" and the clarification of the parking spaces for commercial motor vehicles that may be counted for eligibility purposes. GGE asks that the Board disregard demands from other commenters that: (1) another definition of "commercial motor vehicle" be utilized; and (2) the Board delete the specific dimensions for parking spaces dedicated for commercial motor vehicles (8' x 53') from the temporary regulations.⁴ GGE agrees with Accel Entertainment Gaming, LLC that use of the UCDL Act's definition of a "commercial motor vehicle" provides clarity for establishments as to whether they may qualify for a license from the Board.⁵

¹ 75 Pa.C.S. § 1603.

² 58 Pa. Code § 1103.1.

³ 58 Pa. Code § 1103.1(b)(2).

⁴ Penn National Gaming, Inc. April 6, 2018 Public Comment on Regulation #125-211 at 2; Commonwealth Gaming LLC's March 19, 2018 Public Comment on Regulation #125-211 at 2-5.

⁵ See Accel Entertainment Gaming, LLC February 23, 2018 Public Comment on Regulation #125-211 at 1.

GGE strongly opposes Penn National Gaming, Inc.'s assertion that the "temporary regulations should be amended to clarify that fueling island positions may be counted toward the parking space requirement."⁶ The Act is clear in its definition of "truck stop establishment" that fuel islands are separate and distinct from parking spaces and provides no indication that fuel islands should be counted as parking spaces.⁷ Moreover, the purpose of a fuel island is for a driver to refuel their vehicle – not to provide a parking space for a driver to leave his or her vehicle for a prolonged period of time.

Penn National's attempt to expand the number and type of establishments that are eligible to offer video gaming terminals is not consistent with the Act. GGE urges the Board to maintain its commitment to the intent of the Act, that video gaming terminals be available at truck stops that: (1) are situated on an appropriately-sized parcel of land not owned by the Pennsylvania Turnpike; (2) are equipped with diesel fuel islands for commercial motor vehicles; (3) sell the required amount of diesel or biodiesel fuel; (4) have at least 20 parking spaces dedicated for commercial motor vehicles; and (5) have a convenience store. The Board should not be persuaded to expand the eligible establishments so that typical convenience stores are eligible to offer video gaming terminals. A massive expansion of video gaming terminals of this nature would present a competitive threat to the Commonwealth's casinos. The Board's careful consideration of the definitions of "commercial motor vehicle" and "parking spaces dedicated for commercial motor vehicles" appropriately implements the actual text of the Act and reflects the potential negative effect of a major unintended expansion of video gaming in the Commonwealth.

II. *The Board Should Maintain Restrictions on Terminal Operator Investments in Video Gaming Related Additions/Renovations to Establishments*

The Board should also maintain its restrictions on terminal operator investments in video gaming related renovations to establishments. Terminal operator investment restrictions are contemplated by the Act and assist in preserving existing gaming revenue. A brief summary of the pertinent statutory and regulatory provisions follows.

The Act prohibits a terminal operator licensee from giving or offering to give "any type of inducement to a truck stop establishment to secure or maintain a terminal placement agreement."⁸ The term "inducement" is defined in the Act to include "an enticement to solicit or maintain the establishment licensee or establishment licensee owner's business" and any cash, incentive, payment, etc. that offsets an establishment licensee's operational costs.⁹ The definition specifically excludes "costs paid by a terminal operator applicant or terminal operator

⁶ Penn National Gaming, Inc. April 6, 2018 Public Comment on Regulation #125-211 at 2.

⁷ 4 Pa.C.S. § 3102.

⁸ 4 Pa.C.S. § 3702(b)(6).

⁹ 4 Pa.C.S. § 3102.

licensee related to making video gaming terminals operate at the premises of an establishment licensee, including wiring and rewiring, software updates, ongoing video gaming terminal maintenance....”¹⁰

Section 1116.7 of the Board’s temporary regulations further defines an “inducement” and makes clear that an “inducement” does not include “payment by a terminal operator licensee for the actual costs of renovating an existing area of the footprint of the truck stop establishment for the purpose of making the video gaming area and associated areas available for the conduct of video gaming.”¹¹ Section 1116.7 goes on to state that a truck stop establishment may make further modifications to its facility to accommodate video gaming.¹² The temporary regulations make clear that renovations to an establishment that go beyond its existing footprint may not be funded by a terminal operator licensee and payment for such renovations by a terminal operator would be considered a prohibited inducement.

Pro-video gaming terminal commenters have encouraged the Board to allow terminal operators to pay for renovation costs to establishments that go beyond “an existing area of the footprint of the truck stop establishment.”¹³ The commenters argue that, in order to provide a fun and comfortable experience for customers, optimal safety to employees and to aid in monitoring underage individuals and self-excluded/excluded persons, creating a video gaming area for an establishment may require expanding beyond the establishment’s footprint.¹⁴ GGE acknowledges that an optimal video gaming area may require expanding an establishment’s footprint. However, a truck stop establishment is not prohibited from expanding beyond its current footprint to accommodate video gaming. The Board has merely laid out who can and who cannot pay for that type of expansion. While the Act makes clear that a terminal operator licensee may make certain renovations to a video gaming area, it is also clear in its objective to prevent a terminal operator licensee from inducing a truck stop establishment to secure or maintain a terminal placement agreement.¹⁵

The inducement provisions are in place, in part, to protect the integrity of gaming in Pennsylvania, as well as the Commonwealth’s casinos. The prohibition on inducements by terminal operators is not unlike other cross-sector participant restrictions in the Gaming Act, and is an important safeguard. The Act also reflects the legislature’s acknowledgment that wide-

¹⁰ 4 Pa.C.S. § 3102.

¹¹ 58 Pa. Code § 1116.7(f)

¹² 58 Pa. Code § 1116.7(f)

¹³ See Penn National Gaming, Inc. April 6, 2018 Public Comment on Regulation #125-211 at 8; Commonwealth Gaming LLC’s March 19, 2018 Public Comment on Regulation #125-211 at 5-6.

¹⁴ See Penn National Gaming, Inc. April 6, 2018 Public Comment on Regulation #125-211 at 8; Commonwealth Gaming LLC’s March 19, 2018 Public Comment on Regulation #125-211 at 6.

¹⁵ 4 Pa.C.S. § 3702(b)(9) (“no terminal operator licensee may make structural alterations or significant renovations to a video gaming area unless the terminal operator licensee has notified the establishment licensee and obtained prior approval from the board”).

spread expansion of gaming would result in cannibalization of existing gaming revenue and weaken the financial condition of the Commonwealth's casinos. The Board has soundly implemented the inducement provisions set forth in the Act, and GGE encourages the Board to maintain its current language relating to inducement in its temporary regulations.

Thank you for your consideration of GGE's positions on these two important matters. Should you have any questions on these comments, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark S. Stewart", with a long horizontal line extending to the right.

Mark S. Stewart