



Eckert Seamans Cherin & Mellott, LLC
213 Market Street - 8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Mark S. Stewart
717.237.7191
mstewart@eckertseamans.com

September 14, 2009

RECEIVED

SEP 14 2009

VIA HAND DELIVERY

Richard Sandusky, Director of Regulatory Review
Pennsylvania Gaming Control Board
303 Walnut Street, Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106-9060

Re: Public Comment on Proposed Rulemaking No. 125-100

Dear Mr. Sandusky:

Downs Racing, L.P., t/d/b/a Mohegan Sun at Pocono Downs (“MSPD”), is a Category 1 slot machine licensee that owns and operates a licensed facility located at 1280 Highway 315, Wilkes-Barre, Pennsylvania. MSPD respectfully submits the following comments to the Pennsylvania Gaming Control Board (the “Board”) in connection with its proposed rulemaking #125-100.

Proposed rulemaking #125-100 represents a substantial endeavor by the Board to improve and streamline the vendor certification and registration process under the Board’s current regulations (specifically 58 Pa. Code §§ 435a and 437a). MSPD and other licensed facility operators have supported such changes, and the Board should be applauded for dedicating significant efforts to minimize excessive filings by vendors and address the general efficiency of the vendor certification and registration process in its entirety. Some of the positive and noteworthy changes in the proposed rulemaking include: (1) the increase of the monetary thresholds that would trigger vendor certification and registration in section 437a.1; (2) the clarification of persons required to be found qualified by the Board under sections 437a.2 and 437a.4; (3) the creation of temporary credentials under section 435a.10¹ for those persons required to be found qualified; and (4) the creation of a temporary access credential under sections 437a.7(e) and 435a.11² enabling employees of construction vendors working in restricted areas under an original contract, change order, punch list, warranty work or periodic repairs, to avoid obtaining permits and registration under certain conditions. MSPD supports all of these changes and initiatives, as well as the Board’s repeated goal of reducing unnecessary filing requirements related to vendor registration and certification.

¹ The published version of Proposed Rulemaking #125-100 cites this section as 435a9a.

² The published version of Proposed Rulemaking #125-100 cites this section as 435a9b.

Richard Sandusky
September 14, 2009
Page 2

While the proposed rulemaking makes a wise attempt to streamline the vendor registration/certification process, there remains room for improvement and further clarification in certain areas.

The proposed changes under section 437a.1(c) insert a new requirement stating that a vendor indirectly providing goods and services to a slot machine licensee through an intermediary, affiliate or holding company must register or certify if the monetary thresholds in section 437a.1(a) and (b) are met. Presumably, this would capture the scenario where an operator with multiple facilities does its purchasing through an entity other than the licensed facility in Pennsylvania. However, the provision is unclear as to how the thresholds are applied. Is it the contract with the intermediary that is measured against the threshold? Or is it the value of those portions of goods and services that are actually attributed to the licensed facility to which the threshold applies? If the latter, how is the value to be measured for services that are not distinct or easily attributable?

Sections 437a.2(b)(4) and (e) and 437a.4(a)(1)-(4), relating to registration and certification, respectively, require officers and directors, owners with a direct or indirect interest of 10% or more, individuals with the power to control or influence the vendor's affairs, and salespersons who will have direct contact with slot machine applicants and licensees to submit fingerprints and be found qualified by the Board. Presumably, these provisions are intended to give effect to the Board's goal of reducing unnecessary filings. However, the provisions should be clarified and adjusted so to ensure that the Board's goal is achieved. For instance, an exception should be built into the subsections exempting owners and directors who are not involved in the management or control of the registered or certified vendor applicant from submitting fingerprints and being found qualified. Similar exceptions were contained in the Board's then temporary regulations for principal licensure in relation to slot machine licensees. Further, the phrase "power to control or influence" found in sections 437a.2(b)(4)(iii) and 437a.4(a)(3) is vague and, therefore, may not have the overall effect intended by the Board of streamlining vendor registration and certification. MSPD suggests that these subsections be deleted, as the persons with the power to control or influence the vendor have already been captured by the other subsections. Alternatively, the Board should narrow or further define the "power to control or influence" in order to avoid confusion as to how the requirement is intended to be applied.

The proposed changes to section 437a.7(b) and (c) would result in a significant expansion of the filing requirements for vendor registration, and thus are contrary to the stated intent of the Board's rulemaking. In each of these subsections, the Board will require, for the first time, that certain employees of registered vendors obtain occupation permits and nongaming employee registrations. These changes represent a significant expansion of the filing requirements and costs to be imposed on registered vendors. Further, the addition of section 437a.7(c)(4), requiring off-site supervisors of registered or certified vendors' employees working at a licensed facility to file for a nongaming registration, will impose unnecessary costs on vendors, particularly those only meeting the registration monetary threshold. The Board has given no real

Richard Sandusky
September 14, 2009
Page 3

explanation of why this requirement is appropriate or how any purported public benefit will outweigh the substantial costs of the increased regulation. Increased costs to vendors may discourage vendors not conducting large amounts of business in Pennsylvania, *i.e.*, at the level requiring certification, from engaging in business transactions with slot machine applicants or licensees. MSPD urges the Board to reconsider the expansion of licensure for the employees of registered vendors, and eliminate the new requirement in section 437a.7(c)(4) for licensure of off-site supervisors.

Sections 437a.7(e) and 435a.11 allow for the issuance of temporary access credentials for employees of construction company vendors who are working in restricted areas to complete work under an original contract, process change orders or take care of punch list items, or perform periodic repair or warranty work. However, Section 435a.11(c) would restrict the issuance of a vendor employee temporary access credential to a period of not more than 12 days in a 12-month period. This limitation unnecessarily limits the effectiveness of the temporary access credential by restricting it to an arbitrary time period that may have no relation to the types of permitted work contemplated by the creation of the temporary access credentials. The completion of a particular contract, addressing of change orders or punch list items, or repair or warranty work could easily require more than 12 days in a year. Work interruptions or stoppages associated with the availability of parts or materials, the scheduling of other jobs, etc., could reasonably extend such work beyond the 12 day restriction. Greater flexibility is required if the new provisions are to have their desired beneficial effect. MSPD urges the Board to eliminate Section 435a.11(c) and address the issue on a case by case basis. Such vendor employees must receive their credentials from the Board's casino compliance representatives (section 437a.7(e)(3)), who would be on the ground and would be well positioned to identify an engagement where the duration is a cause for concern. Alternatively, the Board should expand the 12 day/year restriction to a more reasonable length of time; *e.g.*, not to exceed 30 days.

The new language in Section 437a.8(b) restricting a slot licensee's ability to purchase goods or services with a dollar value equal to or exceeding \$100,000 from vendors not on the authorized vendor list should be clarified. The language, as written, suggests that a slot licensee could never do business with a new vendor, not already on the list, on the condition that such vendor apply for registration or certification and obtain permission to conduct business prior to registration/certification under Section 437a.9. MSPD assumes that such a result is not the intent of the new language in Section 437a.8(b), as it would significantly restrict slot licensee's ability to conduct business and its freedom of choice in purchasing goods and services.


Finally, in section 437a.11(c), MSPD urges the Board to provide further clarification that any duty on the part of slot machine applicants and licensees to inform the Board of vendors' violations of the Gaming Act or the Board's regulations is limited to violations about which the applicants and licensees have actual knowledge. The following modification to the provision is suggested: "shall have a duty to inform . . . of any action by an applicant for or holder of a vendor registration or certification of which the applicant for or holder of a slot machine license

Richard Sandusky
September 14, 2009
Page 4

has actual knowledge and believes would constitute a violation of the act or the Board's regulations."

For all of the above-stated reasons, MSPD urges the Board to consider favorably its requests for clarification and adjustment to proposed rulemaking #125-100. Thank you for considering the comments of MSPD in regard to the proposed rulemaking. We will be happy to answer any questions the Board has on these comments.

Very truly yours,



Mark S. Stewart

MSS/jls

cc: Mike Bean, Esquire