# IN THE MISSOURI GAMING COMMISSION

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| In Re: | ) | |
| | ) | DC-15-083 |
| Missouri Gaming Company | ) | |

## PRELIMINARY ORDER FOR DISCIPLINARY ACTION

1. Comes now the Missouri Gaming Commission acting in its official capacity pursuant to 11 CSR 45-13.050, and states as follows:

2. The Missouri Gaming Commission (the "Commission" or "MGC") is a state commission created under Chapter 313, RSMo 2000,[1] with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri.

3. The Commission issued Penn National Gaming, Inc. ("Penn"), a Class A gaming license to develop and operate Class B gaming licenses in the State of Missouri.

4. Penn National Gaming, Inc., is the parent organization or controlling entity of the Missouri Gaming Company (the "Company").

5. The Commission issued a Class B riverboat gambling license to the Company to conduct games on and operate the excursion gambling boat known as *Argosy Riverside Casino* ("Argosy" or the "Casino").

6. As the holder of a Class B license, the Company is subject to the provisions of §§ 313.800 to 313.850, RSMo, and the regulations promulgated thereunder by the Commission.

## STATEMENT OF FACTS[2]

7. On February 28, 2014, Slot Repair Shift Manager, Bryan D. Cipolla ("Cipolla") was informed of a complaint by a patron that the reset amount for the progressive award on an Electronic Gaming Device (EGD) was not correct. Cipolla reviewed the Probability and Accounting Report (PAR) sheets and determined that the Progressive award reset amount was not correctly set as indicated on the PAR sheet.

8. Cipolla performed an audit of the entire listing of progressive machines and found three other progressive links that were incorrect. He corrected those to the reset amount shown on the PAR sheets labeled as P1.

9. On two of the progressive links, the amount was set too low, and on two other progressive machines, the amount was set too high. Ninety-nine patrons were impacted by the Progressive Configuration error, which resulted in an underpayment of $141,000.

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[1] All statutory references are to RSMo 2000, unless otherwise specified.
[2] 20140324014

10. Cipolla then called MGC EGD Coordinator, Kelly Florea ("Florea") and informed her of the patron's complaint, the error he discovered, and reset the impacted machines to match the PAR sheet.

11. Cipolla followed up his call to Florea with an email to her on February 28, 2014, in which he stated,

> When I was approached about the Progressive link, I checked the listing and then checked the PAR sheet. The listing showed it at $8,000 however, the PAR sheet showed that it should have been $10,000. After that we did an audit of the entire listing and found three other Progressive links that are incorrect. At your request, we have made the corrections to the base reset amount as well as the current Progressive meter for the two links that are less than what was reflected on the PAR sheets. The other two links that are more than what was listed on the PAR sheets will have the base reset amount corrected.

12. On March 26, 2014, MGC EGD Specialist, Dawn Leehy issued Cipolla a Notice of Investigation ("NOI"), citing him with violating Minimum Internal Control Standards ("MICS"), Chapter E, § 1.12.

13. After receiving the NOI, Cipolla discussed the matter with Compliance Manager Wendy Malotte ("Malotte"), General Manager John Chaszar ("Chaszar"), Vice President of Casino Operations Greg Personelli ("Personelli"), and acting Corporate Slot Director Lowell Jacobsen ("Jacobsen").

14. Following those discussions, Cipolla responded to the NOI. His response was inconsistent with the verbal self report he initially made and the follow-up email he sent to Florea on February 28, 2014.

15. Cipolla's March 27, 2014 response to the NOI stated, "Nowhere on these pages (PAR sheet) does it state Progressive or what Progressive reset levels should start at a rate progression if you choose to make such EGD a progressive game." He also asserted that there was no evidence that the Casino had violated MICS, Chapter E, § 1.12.

16. On July 8, 2014, Malotte sent a letter on behalf of Argosy to Deputy Director of Enforcement, William K. Seibert, Jr. ("Seibert"), denying any violation of the applicable rules and Minimum Internal Control Standards and further stating in reference to "P1," that "we believe it is an abbreviation for 'Pays.'"

17. On July 18, 2014, Cipolla gave an additional written response to the MGC indicating that the machines were not in violation of MICS, Chapter E, §1.12, but merely inconsistent with Penn's standard practice. He stated that in absence of this Penn standard practice, he would have utilized the top award level "P1" as a base starting amount.

18. On July 25, 2014, an internal email was sent from Compliance Security Coordinator Brian Snell ("Snell") to Vice President, Regulatory Affairs for Penn National Gaming, Frank Donaghue ("Donaghue"), and Malotte, in which he indicated the following:

    a. "The machines have been on the floor for approximately 10 years, the amounts on two were set too high and the other two were set to low by a few thousand dollars";

    b. "In reviewing the PAR sheets provided by the manufacturer, it was clearly stated on two of them what the top award amount was and thus what the progressive reset should be at. Those were corrected. The other two, however were not as clear"; and

    c. "Wendy and I believe that a substantial fine will ensue as a result of this."

19. On August 15, 2014, Malotte sent a letter to Seibert, again asserting that the PAR sheets do not definitively indicate what the Progressive reset value should be and denying any violation of MICS, Chapter E, § 1.12.

20. On September 3, 2014, MGC personnel interviewed Cipolla. In that interview, Cipolla indicated that he had extensive experience in setting up "hundred…thousands" of EGDs over the years he worked for Argosy.

21. Cipolla further stated during the September 3, 2014 interview that he did not know what the term "P1" meant, but that "P1" could mean "Pay."

22. Cipolla was re-interviewed on October 9, 2014, during which he made the following statements:

    a. His assumption had always been that "P1" meant "Progressive";

    b. He did not think he had ever associated "P1" with "Pays";

    c. In meetings regarding the preparation of Argosy's written responses to this alleged violation, he told other participants in a meeting that he always assumed that "P1" meant "Progressive value"; and

    d. When he saw the final draft of Argosy's July 8, 2014 letter to the MGC, he told the participants in a meeting, "I really hope that's not how you guys are going to handle it."

23. On October 16, 2014, MGC personnel interviewed Malotte, during which she made the following statements:

    a. She was the author of the July 1, 2014 letter to the MGC;

    b. Jim Baldacci ("Baldacci"), Deputy Chief Compliance Officer for Penn National Gaming, Inc., Chaszar, Personelli, Tim Kelley ("Kelly"), Vice President of Casino

Operations, Cipolla, Ameet Patel ("Patel"), Senior Vice President of Regional Operations and Donaghue reviewed, edited, and approved the July 1, 2014 letter to the MGC;

c. Cipolla told the group reviewing the response to the MGC that "P1 … could stand for 'pays,'" but that Cipolla also told the group that it was his assumption that "P1" meant Progressive; and

d. The draft of the July 8, 2014 letter was reviewed and edited by Baldacci, Chaszar, Personelli, Kelley, Cipolla, Patel, Donaghue and Jacobsen.

24. On February 1, 2014, Revenue Audit Leads Marilyn Lair and Darlene Matthews asked for assistance on reading a PAR sheet. Cipolla provided a detailed explanation, including identifying the term "P1" as "Progressive payouts."

## LAW

25. Under § 313.805(6), RSMo, the Commission may assess any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, or penalties in an amount determined by the Commission.

26. Section 313.812.14, RSMo, states, in pertinent part, as follows:

> A holder of any license shall be subject to imposition of penalties, suspension or revocation of such license, or if the person is an applicant for licensure, the denial of the application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, morals, good order and general welfare of the people of the state of Missouri, or that would discredit or tend to discredit the Missouri gaming industry or the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action. The commission shall take appropriate action against any licensee who violates the law or the rules and regulations of the commission. Without limiting other provisions of this subsection, the following acts or omissions may be grounds for such discipline.
>
> (1) Failing to comply with or make provision for compliance with sections 313.800 to 313.850, the rules and regulations of the commission or any federal, state or local law or regulations;
>
> (2) Failing to comply with any rule, order or ruling of the commission or its agents pertaining to gaming;
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> * * *

(9) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties regulated by sections 313.800 to 313.850.

27. Under 11 CSR 45-4.260(4)(E), (F), (M), (N), (O), and (Q), the Commission may suspend or revoke an occupational license of any person if any of the following occur:

a. The Licensee fails "to comply with or make provisions to comply with Chapter 313, RSMo, the rules of this commission, or any federal, state, or local law or regulation," under 11 CSR 45-4.260(4)(E);

b. The Licensee "fails to comply with any rule, order or ruling of the commission or its agents," under 11 CSR 45-4.260(4)(F);

c. The Licensee fails "to cooperate with any officially constituted investigatory or administrative body and would adversely affect public confidence and trust in gaming," under 11 CSR 45-4.260(4)(M);

d. The Licensee "provides the commission or its agent with false or misleading information, documents, or data or who makes false or misleading statements to the commission or its agents," under 11 CSR 45-4.260(4)(N);

e. The Licensee "commits an act or omission that, if committed by a Class A licensee, would be grounds for discipline or denial," under 11 CSR 45-4.260(4)(O); and/or

f. The Licensee's actions demonstrate "incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties regulated by §§ 313.800 to 313.850, RSMo," under 11 CSR 45-4.260(4)(Q).

28. Title 11 CSR 45-5.053 states, in pertinent part, as follows:

(2) It is the policy of the commission to require that all riverboats and gaming conducted on riverboats be operated in a manner suitable to protect the public health, safety, morals, good order and general welfare of Missouri. Responsibility for the employment and maintenance of suitable methods of operation rests with the holder of a operator's license and willful or persistent use or toleration of methods of operation deemed unsuitable will constitute grounds for disciplinary action, up to and including license revocation.

(3) The holder of a Class A or B license is expressly prohibited from the following activities:

* * *

(D) Failing to comply with or make provision for compliance with all federal, state and local laws and regulations pertaining to the operation of a license…;

* * *

(L) Denying a commissioner or commission agent, information concerning any aspect of the riverboat operation; and

(M) Failing to report to the commission known or suspected violations of commission rules and applicable law.

29. Title 11 CSR 45-9.060 states, in pertinent part, as follows:

(3) Violations of the minimum internal control standards [("MICS")] by a Class A licensee or an agent or employee of a Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to administrative penalty pursuant to Section 313.805(6), RSMo, and 11 CSR 45-1 et seq.

(4) Violations of the Class A licensee's internal control system [("ICS")] by the Class A licensee or an agent or employee of the Class A licensee shall be *prima facie* evidence of unsuitable conduct for which the Class A licensee and/or its agents or employees may be subject to discipline pursuant to Section 313.805(6), RSMo, and 11 CSR 45-1 et seq.

30. Title 11 CSR 45-10.030 states, in pertinent part, as follows:

(1) Licensees shall promptly report to the commission any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than minor traffic violations), minimum internal control standard requirements or commission rule committed by licensees, their employees or others, including, without limitation, the performance of licensed activities different from those permitted under their license.

* * *

(6) Class A, Class B, and supplier licensees shall ensure that all agents and occupational licensees employed by said licensees shall have a working knowledge of Missouri Gaming Statutes, Chapter 313.800, RSMo et seq., *Code of State Regulations*, Title 11 Division 45, the commission's published minimum internal control standards and the licensee's system of internal controls as they pertain to the responsibilities and limitations of their job.

(7) All occupational licensees shall have a working knowledge of Chapter 313.800, RSMo et seq., *Code of State Regulations*, Title 11 Division 45, and

the internal controls of the Class A or B licensees for whom they are currently employed by as they pertain to the responsibilities and limitations of their job.

31. Both the MICS, Chapter E, § 1.12 and the Casino's ICS, Chapter E, § 1.12 require the Licensee to "ensure EGDs offered for play utilize valid configurations as noted in the manufacturer's hardware and software release notes."

## VIOLATIONS

32. The acts or omissions of employees or agents of the Casino and the Company, as described above, constitute a failure of the Casino to set the EGDs utilizing valid configurations as noted in the manufacturer's hardware and software release notes, a failure of the Company and its employees and agents to provide complete, accurate, and truthful information to the MGC, and further making statements that were false or misleading, thereby violating 11 CSR 45-4.260(4)(E), (F), (M), (N), (O), and (Q), 11 CSR 45-5.053(3)(D), (L), and (M), 11 CSR 45-10.030(1), (6), and (7), MICS, Chapter E, § 1.12 and the Casino's ICS, Chapter E, § 1.12.

33. The Company is therefore subject to discipline for such violations pursuant to §§ 313.805(6) and 313.812.14 (1), (2) and (9), RSMo, 11 CSR 45-5.053(2) and 11 CSR 45-9.060(3) and (4).

## PENALTY PROPOSED

34. Under § 313.805(6), RSMo, the Commission has the power to assess any appropriate administrative penalty against the Company as the holder of a Class B license.

35. THEREFORE, it is proposed that the Commission fine Missouri Gaming Company, the amount of $250,000 for the violations set forth herein.

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Leland M. Shurin
Chairman
Missouri Gaming Commission

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing to be mailed, postage prepaid, this ____ day of March, 2015, to:

Aaron Rosenthal
Argosy Riverside Casino
777 NW Argosy Pkwy.
Riverside, MO 64150

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Leland M. Shurin
Chairman
Missouri Gaming Commission