

OMAHA TRIBE OF NEBRASKA

P. O. Box 368
Macy, Nebraska 68039

EXECUTIVE OFFICERS

Amen Sheridan, Chairman
Mitchell Parker, Vice-Chairman
Jeff Miller, Treasurer
Forrest "JC" Aldrich, Secretary



TRIBAL ADMINISTRATION

(402) 837-5391
FAX (402) 837-5308

MEMBERS

Rodney Morris
Doran Morris, Jr
Tillie Aldrich

**Statement of Chairman Amen Sheridan
Omaha Tribe of Nebraska
NIGC Regulatory Review Consultation
November 14, 2011
Rapid City, SD**

Madam Chair, Distinguished Members of the Commission:

It is my great privilege to appear before you today to provide comments on behalf of the Omaha Tribe of Nebraska. We would like to begin by commending the members of the NIGC for its demonstrated commitment to engaging meaningfully with tribal governments on a government-to-government basis with regard to this important regulatory review effort. We are encouraged by the NIGC's new approach to more direct and frequent consultation with tribal governments, and view such approach as reflective of the NIGC's new direction towards developing a more collaborative and complementary relationship that emphasizes trust, respect, and share responsibility.

In the NIGC's Notice of Inquiry which was published around this time last year, the NIGC announced it was taking a "fresh look" at its rules to determine which amendments were necessary to more effectively implement IGRA's policies and goals, and that it was seeking advice and input on how its regulations could be updated to be more "consistent with federal law, tribal sovereignty, and tribal expertise." Since the publication of that Notice of Inquiry, the NIGC has undertaken an ambitious regulatory review process and established an impressive record consisting of over twenty consultation meetings nationwide; the publication and review of over ten discussion drafts drafts of proposed rules; and the initiation of two proposed rulemakings. We applaud the hard work of Chairwoman Stevens, Vice-Chairwoman Cochran, and Commissioner Little, and the NIGC staff, all of whom have been instrumental to the success of this regulatory review process. We appreciate this opportunity to present our views on the revisions that have been proposed thus far, and look forward to working closely with the Commission during this regulatory review process and on other matters of common importance.

In our view, the NIGC has offered excellent ideas with regard to revisions to some of its regulations, as we will note in our statement. Nonetheless, we would like to offer our thoughts on a number of outstanding issues that we believe warrant additional consideration. Our comments are summarized and divided into separate sections addressing each of the regulations for which the Commission is seeking comments.

The first section we would like to address is:

1) **Part 514 – Fees**

The Omaha Tribe is highly supportive of the NIGC's proposal to revise this part to:

- Adopt a less punitive, tiered approach to addressing late fee payments, which encourages voluntary compliance and delays official NIGC enforcement action for a period of ninety days.

The Omaha Tribe respectfully encourages the NIGC to further consider the following remaining issues of concern to the Tribe:

- Additional factors such as the size of a tribe's gaming operation and the presence of undue hardship should be considered in determining the amount of the late fee, if any. Undue hardship is of particular relevance to the Omaha Tribe, which was forced to temporarily shut down one of its gaming facilities following the Missouri River flooding earlier this year.
- Also, we ask the NIGC to consider including a grace period to provide some relief to those tribes that are unable to submit timely payments for reasons such as administrative errors and disruptions in mail delivery that are beyond their reasonable control.

2) **Part 559- Facility License Notifications, Renewals, and Submissions**

The Omaha Tribe is highly supportive of the NIGC's proposal to revise this part to:

- Eliminate unduly burdensome environmental and public health and safety reporting requirements. We agree that a tribal attestation is a much more efficient means of achieving the Commission's regulatory objective.
- We strongly support the clarification that seasonal closures will not trigger any notice requirements.
- We also support the removal of the three-year facility license renewal requirement, which we believe is consistent with principles of tribal sovereignty. We believe the duration and other conditions upon licensure are matters properly within the discretion and authority of tribal rather than federal government.

The Omaha Tribe respectfully encourages the NIGC to further consider the following remaining issues of concern to the Tribe:

- In addition to the notice exemption for occasional charitable events lasting not more than a week, we believe there should be a similar exemption for temporary facility licenses that are issued for a period not to exceed 180 days.
- The regulation should include the standards governing when the Chair may exercise his or her discretion to request additional documentation relating to Indian lands,

environmental and public health and safety documentation from a tribal government. Such standards will help ensure that requests for additional documentation are reasonable and guard against arbitrary and capricious decision-making.

3) Part 573 – Enforcement

The Tribe is highly supportive of the NIGC's proposal to revise this part to:

- Formally adopt a voluntary compliance approach that would provide tribes with notice and an opportunity to correct regulatory deficiencies prior to official NIGC enforcement action. We believe this accords with the IGRA's goal of strengthening tribal governmental as well as federal policies advancing self-governance and self-determination.

The Tribe respectfully encourages the NIGC to further consider the following remaining issues of concern to the Tribe:

- Some procedural uncertainties remain in relation to this regulation, particularly with respect to letters of concern and/or non-compliance notices. It is unclear whether such letters and notices will always be issued before an NOV, or whether there are certain circumstances that would warrant the immediate issuance of an NOV. We believe that notice should always precede a formal notice of violation since the NIGC is a civil regulatory agency and as such, its intent should be to effect compliance, not punish.
- We ask the NIGC to consider adding a "good faith exception" that would provide tribes with additional time to come into voluntary compliance, so long as the tribe has made a good faith effort to come into compliance within the specified time period.

4) Regulations Concerning Proceedings Before the Commission

The Tribe respectfully encourages the NIGC to further consider the following remaining issues of concern to the Tribe:

- The formalization of the procedures governing NIGC proceedings may restrict the Commission's ability to work with tribes informally to resolve the issues giving rise to the appeal. We do not believe the IGRA intended for the NIGC to conduct adversarial, trial-type hearings. We believe NIGC proceedings should be a process by which tribes and the Commission can work together on a government-to-government basis to reach an amicable resolution of a regulatory issue that is properly brought under the NIGC's hearing powers.
- Also, the restrictions on ex parte communications should be narrowed down to prohibit any communications that may unduly influence the outcome of any matter pending in a proceeding instead of all communications with any person employed by the agency.

be appropriate. Specific examples of situations where completion letters will not be issued would be one way of providing such guidance.

In closing, we would like to thank you for this opportunity to engage with each of you on these important regulatory issues. We respectfully request your favorable consideration of our comments and suggestions and look forward to continued cooperation and coordination in the spirit of the government-to-government relationship and in accordance with federal law and policy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amen Sheridan', written in a cursive style.

Amen Sheridan
Chairman, Omaha Tribe of Nebraska