

ORDER 2018-122

**AN ORDER OF THE INDIANA GAMING COMMISSION
CONCERNING GRANTING TRANSFER OF OWNERSHIP
INTEREST IN RIVERBOAT OWNER'S LICENSE**

I. BACKGROUND

On February 28, 2018, the Indiana Gaming Commission ("Commission") received a request from Penn National Gaming, Inc. ("Penn") seeking the Commission's approval to acquire Pinnacle Entertainment, Inc.'s ("PNK") through a public merger. Penn is presently the parent company of Indiana casino owner's licensee Indiana Gaming Company, LLC, operating as Hollywood Casino Lawrenceburg ("Hollywood") located in Lawrenceburg, Indiana. PNK is presently the parent company of Indiana casino owner's licensee Ameristar Casino East Chicago, LLC, operating Ameristar Casino ("Ameristar") located in East Chicago, Indiana.

By acquiring PNK, PNK would become a wholly owned subsidiary of Penn, with the exception of four entities that will be divested to Boyd Gaming Corporation. As a result, PNK's corporate structure would remain intact, but become wholly owned by Penn and added to Penn's corporate structure. Upon completion of this transaction, Penn will acquire a controlling interest in the Ameristar casino owner's license. The officers, directors, and key persons of Penn will remain the same. Likewise, Ameristar will continue to operate with the same property level management in place and the same corporate structure; however, its ultimate parent company will now be Penn instead of PNK.

Gaming and Leisure Properties, Inc. ("GLPI"), a publicly held company, currently holds a supplier's license issued by the Commission pursuant to 68 IAC § 2-2-1(c)(5) and through Order 2013-121. GLPI owns the real estate at Hollywood and Ameristar through a Real Estate Investment Trust. Penn will acquire PNK's previously approved lease with GLPI for, among other assets, the Ameristar property. Ameristar will continue to be responsible for casino gambling operations.

As part of this transaction, Penn will also undertake debt activity which must be approved by the Commission pursuant to Ind. Code § 4-33-4-21 and 68 IAC 5-3-2. Debt transactions are analyzed to ensure the financial health of casino licensees and to ensure that a casino owner's license is not leased or hypothecated and that money is not borrowed or loaned against a casino owner's license.

Ind. Code § 4-33-4-21 provides that a licensed owner must apply for and receive Commission approval before an owner's license is transferred, sold, or purchased.

In consideration of Penn's request, the Commission has considered the following factors:

1. Penn has submitted a complete transfer of ownership interest application and caused to be submitted complete personal disclosure forms and other appropriate applications for Penn and all key persons, as deemed necessary by Commission staff.
2. The approvals required by the parties' shareholders has occurred;
3. The Commission's Background and Financial Investigations Divisions have completed a comprehensive investigation of Penn, including key persons. Commission staff has presented the final investigative reports to the Commission for review.
4. The Commission's Financial Investigations Division has completed a comprehensive investigation of Penn's proposed debt activity related to this transaction and provided analysis of the debt activity to the Commission for review.

5. Representatives of Penn have addressed the Commission at a public meeting to present information relevant to the proposed transfer of the casino owner's license and financing.
6. Penn has presented evidence that it meets or possesses the standards, criteria, and qualifications necessary to be issued a casino owner's license pursuant to Ind. Code ch. 4-33-6 and 68 IAC 2-1-5(c).
7. The acquisition has been granted a conditional approval from the Illinois Gaming Board, the Mississippi Gaming Commission, the Pennsylvania Gaming Control Board, the Pennsylvania State Horse Racing Commission, and the West Virginia Lottery Commission.

II. COMMISSION ACTION

A. Transfer Fee Under Ind. Code § 4-33-4-21(d).

The transfer of ownership before the Commission results in Penn acquiring controlling interest in a second casino owner's license in Indiana, Ameristar, in addition to Hollywood. The Commission hereby finds that Penn remains in compliance with the Indiana statutory limitations set forth in Ind. Code § 4-33-6-6.5 and remains subject to the provisions of Ind. Code § 4-33-4-21. The Commission further finds that Ind. Code § 4-33-4-21(d) requires Penn to pay a two million dollar (\$2,000,000) transfer fee for acquiring controlling interest in the second casino owner's license.

B. Conditional Approval of the Transfer.

The Commission hereby:

1. **APPROVES** the transfer of ownership interest in the casino owner's license for Ameristar from PNK to Penn, which will result in Penn holding a casino owner's license for Hollywood and Ameristar; and
2. **APPROVES** Penn's debt financing package proposed by Penn related to Penn's acquisition of PNK. The Commission also **WAIVES** the so-called "two meeting requirement" of 68 IAC 5-3-2(b)(2) and (3).

The Commission's approval is subject to and contingent upon satisfaction of the following continuing conditions:

1. Federal Trade Commission review concluding in a fashion that would allow the parties to close the transaction;
2. No adverse rulings or decisions are entered by the Federal Trade Commission, the Office of the Indiana Attorney General, or the Internal Revenue Service that would materially impact the transaction;
3. The terms articulated in the final financing documentation do not materially differ from the terms Penn has presented to date, the terms of the final financing documentation do not violate Ind. Code § 4-33-4-21, and upon execution of the final financing documents Penn shall provide to the Commission with a legal opinion demonstrating compliance with Ind. Code § 4-33-4-21, as required by 68 IAC 5-3-2(c)(11);
4. Successful closing of the financing package approved herein;
5. Penn, key persons of Penn, and relevant affiliates, persons and/or entities holding an economic, beneficial, or other interest in Penn remaining in compliance with laws, regulations, and/or other directives that are applicable to a casino owner's licensee;
6. Upon the transaction's closing, Penn shall submit to the Commission a written power of attorney identifying a trustee-in-waiting for Ameristar;

7. Penn shall submit payment of the two million dollar (\$2,000,000) transfer fee assessed upon Penn under Ind. Code § 4-33-4-21(d) for the acquisition of a second casino owner's license; and
8. This Order must become final and non-appealable before the transaction contemplated by the agreement between Penn and Pinnacle may close.

In addition, the Commission hereby requires Penn and GLPI (sometimes collectively referred to as the "the parties") to provide notice to Commission staff regarding the following:

1. Penn shall annually report capital expenditures at Ameristar as a percentage of net revenue;
2. The parties shall report all Penn capital expenditure requests on a monthly basis submitted to GLPI for its consent and GLPI's responses;
3. The parties shall report the annual rental amount required by the Master Lease on or before January 31st of each year;
4. The parties shall promptly report any lease dispute that remains unresolved for more than fifteen (15) days of the dispute occurring;
5. The parties shall report any uncured lease event of default immediately;
6. The parties shall report any bankruptcy filing or any default on the terms of any financing agreements immediately;
7. The parties shall report any lease amendment that materially impacts Indiana properties thirty (30) days before such an amendment would become effective, unless such amendment is necessary to comply with any material law, rule, or regulation, in which case such amendment may be effective immediately and thereafter reported promptly;
8. The parties shall report any lease renewal thirty (30) days before the renewal date;
9. The parties shall promptly report any change in their respective bond rating from Fitch and Ratings, Inc., Standard & Poor's Rating Services, Inc., Moody' Investors Service, Inc., or any other rating agency designated by the Commission;
10. GLPI shall report any other transactions it pursues that are approved by the GLPI Board of Directors, regardless if such transactions involve property in Indiana;
11. GLPI shall report any new financing or refinancing of any of its debt obligations; and
12. GLPI shall report any changes in corporate structure; including but not limited to, any changes in key personnel.

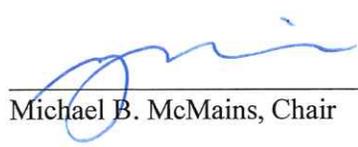
The foregoing notice requirements, as applied to GLPI, also extend to all Indiana real properties to which GLPI is authorized to be supplier licensee.

III. EFFECTIVE DATE:

This Order shall be effective once it becomes a final Order upon the occurrence of the passage of fifteen (15) days following the receipt of the Order from the Indiana Gaming Commission as set forth in Ind. Code § 4-21.5-3-5.

IT IS SO ORDERED THE 28th DAY OF JUNE, 2018

THE INDIANA GAMING COMMISSION: ATTEST:



Michael B. McMains, Chair



Marc Fine, Vice Chair