

National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-24-01

To: Ricky Sylestine
Chairman
Alabama-Coushatta Tribe of Texas
571 State Park Road 56
Livingston, TX 77351

1. *Notification of Violation*

The National Indian Gaming Commission Acting Chairwoman gives notice that the Alabama-Coushatta Tribe of Texas (Tribe) violated the Indian Gaming Regulatory Act (IGRA), NIGC regulations, and its own IGRA Class II gaming ordinance by failing to submit fiscal year 2022 and 2023 audited financial statements (AFS) for its gaming operation. These submissions are four hundred ninety-three (493) days and one hundred twenty-seven (127) days overdue, respectively.

In 2015, the Tribe submitted a Class II gaming ordinance to the NIGC Chair for approval pursuant to IGRA. The Chair's approval letter explained that the U.S. Department of Interior "Solicitor's Office concurred with our conclusion that IGRA applies" "and governs gaming on the [Ysleta del Sur] Pueblo's reservation."¹ And, "because the Tribe and Pueblo share the same Restoration Act, with nearly identical language, the Office of the Solicitor's analysis applies to the Alabama-Coushatta."²

In 2022, the U.S. Supreme Court, in *Ysleta del Sur Pueblo v. Texas*, found IGRA applies to the Pueblo's gaming if such gaming is not prohibited by Texas law:

None of this is to say that the Tribe may offer any gaming activity on whatever terms it wishes. It is only to say that the Fifth Circuit and Texas have erred in their understanding of the Restoration Act. Under that law's terms, if a gaming activity is prohibited by Texas law it is also prohibited on tribal land as a matter of federal law. Other gaming activities are subject to tribal regulation and must conform with the terms and conditions set forth in federal law, including IGRA to the extent it is applicable.³

¹ Letter to Chairperson Nita Battise, Alabama-Coushatta Tribe of Texas, from NIGC Chairman Jonodev Chaudhuri re: Alabama-Coushatta Tribe of Texas Class II Tribal Gaming Ordinance and Resolution No. 2015-038 at 2 (Oct. 8, 2015).

² *Id.*

³ *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 702–03 (2022) (citing, the Brief for United States as *Amicus Curiae*

This finding aligns with the U.S. Department of Justice’s position:

[The Restoration Act] as correctly construed to ban only those gaming activities on [the Pueblo’s] lands that are wholly prohibited under Texas law, is consistent with IGRA’s regulation of gaming in Indian country. That interpretation properly permits IGRA’s detailed national system for Indian gaming regulation, administered by the NIGC, to apply to gaming on petitioner’s lands.⁴

Soon after the Supreme Court’s *Ysleta del Sur Pueblo v. Texas* decision, the NIGC Office of General Counsel advised the Tribe that the NIGC possessed jurisdiction over its non-prohibited gaming given IGRA’s application to it and the NIGC intended to exercise its jurisdiction over such gaming.⁵ Since that time, the NIGC sought the Tribe’s voluntary compliance with the IGRA submission requirements via meetings, including government-to-government meetings; legal analysis; technical assistance; notifications; reminders; and letters of concern.⁶ Nonetheless, the Tribe contends that its gaming is governed solely by its Restoration Act⁷, not IGRA.⁸ But the Tribe is incorrect: IGRA applies, and the Tribe violated the statute, IGRA’s implementing regulations, and its own IGRA Class II gaming ordinance by failing to submit the 2022 and 2023 AFS and AUP reports.

2. Authority

Pursuant to IGRA and NIGC regulations, the NIGC Chair may issue a notice of violation (NOV) to any person for violating any provision of IGRA, NIGC regulations, or a NIGC Chair-approved gaming ordinance.⁹

Supporting Petitioners at 31–33 (Dec. 2021)); In this case, the Tribe also argued for IGRA’s application to its and the Pueblo’s gaming. *See Ysleta v. Texas*, Brief of Amicus Curiae Alabama-Coushatta Tribe of Texas in support of Petitioners at 34 (Dec. 9, 2021) (“The Restoration Act bans on the Tribes’ lands only those gaming activities that Texas bans outright. And Congress enacted IGRA to govern regulation of those gaming activities that Texas chooses to permit.”).

⁴ *Ysleta Del Sur Pueblo v. Texas*, Brief for United States as *Amicus Curiae Supporting Petitioners* at 31 (Dec. 2021).

⁵ Letter to Chairman Sylestine, Alabama-Coushatta Tribe, from NIGC General Counsel Michael Hoenig re: National Indian Gaming Commission’s Regulation of Gaming at Alabama-Coushatta Tribe of Texas at 1 (Oct. 19, 2022).

⁶ Letter of Concern to Honorable Rick Sylestine, Chairman, Alabama-Coushatta Tribe, from Tom Cunningham, NIGC Chief Compliance Officer (CCO) re: Failure to Submit Fiscal Year 2022 Audited Financial Statements and an Agreed Upon Procedures Report (Sept. 28, 2023); Letter of Concern to Chairman Ricky Sylestine, Alabama-Coushatta Tribe, from Tom Cunningham, NIGC CCO re: Failure to Submit Fiscal Year 2023 Audited Financial Statements (July 12, 2024).

⁷ *Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act*, Pub. L. No. 100-89, § 107, 101 Stat. 668-669 (1987).

⁸ Letter to Thomas Cunningham, NIGC CCO, from Chairman Ricky Sylestine, Alabama-Coushatta Tribe, re: Response to Cunningham Letter Dated September 28, 2023 at 2 (Oct. 10, 2023) (“It remains our position that we are gaming under our Restoration Act, not IGRA, and the NIGC has no regulatory authority over that gaming.”); Letter to Thomas Cunningham, NIGC CCO, from Chairman Ricky Sylestine, Alabama-Coushatta Tribe, re: Response to Cunningham Letter Dated July 12, 2024 at 2 (Aug. 21, 2024) (“the Tribe cannot agree to submit to the jurisdiction of the NIGC.”).

⁹ 25 U.S.C. § 2713(a); 25 C.F.R. § 573.3(a).

3. *Applicable Federal laws, tribal ordinance, caselaw, and agency guidance*

- A. IGRA requires an annual audit of each gaming operation and requires tribes to submit a copy of the results of the annual audit(s) to the NIGC.¹⁰
- B. NIGC regulations define “gaming operation” as each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes and pays the expenses.¹¹
- C. NIGC regulations require that a gaming operation maintain permanent books of account or records, including inventory records of gaming supplies, sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements and other information required in any financial statement, report, or other accounting prepared pursuant to IGRA and NIGC regulations. Tribes must make such records available for inspection by the NIGC for no less than 5 years.¹²
- D. NIGC regulations require that a tribe engage an independent certified public accountant to conduct annual independent audits of the financial statements of each gaming operation located on Indian lands for each fiscal year.¹³
- E. NIGC regulations further require a tribe submit a copy of the financial statements and audits, with any management letter and other documents and reports setting forth the results of the annual audit to the NIGC within 120 days after the end of each gaming operation’s fiscal year.¹⁴
- F. The Alabama-Coushatta Tribe of Texas, Class II Tribal Gaming Ordinance, was approved by the NIGC Chair on October 8, 2015 (Ordinance).
- G. The Ordinance, Section 17, requires “Each Gaming Operation regulated by the TGA shall maintain accurate and up to date records for each gaming activity conducted. Records shall include: a. All financial transactions; b. All gaming machine testing, malfunctions, maintenance and repairs; c. Personnel; d. Complaints of Patrons; e. Gaming Operation in house investigations of any kind; f. Incidents and accidents; g. Actions by the TGA against Players or Gaming Operation visitors; and h. Actions by TGA against or in reprimand of employees.”
- H. The Ordinance, Section 18, entitled “Independent Audits” mandates in sub-section 1: “The TGA shall require, and the Tribal Council shall cause, an audit to be conducted each year of all Class II Gaming Operations conducted on Tribal Lands. Such audit(s) shall be conducted by an Independent auditing firm, selected at the sole discretion of the Tribal Council, or by the TGA on

¹⁰ 25 U.S.C. § 2710(b)(2)(C).

¹¹ 25 C.F.R. § 502.10.

¹² 25 C.F.R. § 571.7(a)-(c).

¹³ 25 C.F.R. § 571.12(b).

¹⁴ 25 C.F.R. § 571.13(a).

its behalf. However, nothing in this Subparagraph shall prohibit the annual audit of Gaming Operations activities from being encompassed within the Tribe's existing audit system." Sub-section 3 directs: "The TGA shall furnish a copy of each annual gaming audit report to the NIGC."

- I. In 2022, in *Ysleta del Sur Pueblo v. Texas*, the U.S. Supreme Court found IGRA applies to the Pueblo's gaming if such gaming is not prohibited by Texas law: "Under [the Restoration Act's] terms, if a gaming activity is prohibited by Texas law it is also prohibited on tribal land as a matter of federal law. Other gaming activities are subject to tribal regulation and must conform with the terms and conditions set forth in federal law, including IGRA to the extent it is applicable."¹⁵
- J. On October 19, 2022, the NIGC Office of General Counsel (OGC) confirmed NIGC's jurisdiction over the Tribe's non-prohibited gaming in a letter to the Tribe. Specifically, NIGC OGC explained:

In *Ysleta* the Supreme Court held that the provisions of the [Restoration Act] that apply to Ysleta del Sur Pueblo only ban those gaming activities that are banned in Texas and did not provide for Texas gaming laws to act as surrogate federal law on Indian lands. The provisions of the Restoration Act that apply to Alabama-Coushatta contain nearly identical operative language and therefore we interpret the holding to apply equally. In *Ysleta*, the Court explicitly stated, "[o]ther gaming activities [those not prohibited] ... must conform with the terms and conditions set forth in federal law, including IGRA to the extent it is applicable." IGRA applies to all gaming activities conducted on Indian lands. Here, Alabama Coushatta's gaming activity is conducted on Indian lands. Therefore, IGRA applies to Alabama Coushatta's gaming activity and, pursuant to the *Ysleta* decision, the Tribe's gaming must conform to the terms and conditions set forth in IGRA, including regulatory oversight by the Tribe *and* the National Indian Gaming Commission.

In support of its holding that other Federal laws, including IGRA, apply to gaming activity not otherwise prohibited in the state, the Court cited to pages 31-33 of the United States' Amicus Brief. In that section of the Brief, the United States argued that gaming conducted by Ysleta and Alabama Coushatta on Indian lands is subject to IGRA, and thus subject to regulation by the Tribe and the NIGC to ensure the purposes of IGRA are met. Consistent with the analysis set forth in the United States' Amicus Brief and the Court's reliance on it in reaching its decision in

¹⁵ *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 702–03 (2022) (citing, the Brief for United States as *Amicus Curiae* Supporting Petitioners at 31–33 (Dec. 2021)).

Ysleta, NIGC is proceeding to exercise its regulatory jurisdiction over the Alabama Coushatta's gaming activity.¹⁶

4. *Role of Independent Audit Report*

Submission of the annual independent audit report by a firm of certified public accountants is critical to the NIGC's mission: protecting the integrity of Indian gaming. A firm's ability to conduct an audit in accordance with generally accepted auditing standards and render an opinion on the financial statements prepared in conformity with generally accepted accounting principles provides a certain level of assurance as to the security of tribal gaming revenues. The audit report prepared and submitted on a timely basis is evidence of, among other things, the integrity of the gaming operation and, more specifically, the adequacy of the books and records, the functioning of the internal financial controls, and the disclosure of information bearing upon the financial statements.

5. *Circumstances of the Violation*

- A. The Tribe is a federally recognized Indian tribe with tribal headquarters in Livingston, Texas.
- B. IGRA requires that tribes submit annual audits of each gaming operation.¹⁷ NIGC regulations require that a tribe engage an independent certified public accountant to provide annual independent audits of the financial statements of each gaming operation located on Indian lands for each fiscal year.¹⁸ The NIGC regulations further require a tribe submit a copy of the financial statements and audits, with any management letter and other documents setting forth the results of the annual audit to the NIGC within 120 days after the end of each gaming operation's fiscal year.¹⁹
- C. The Tribe conducted gaming at its operation, Naskila Gaming (Casino), during 2022 and 2023.
- D. The Tribe previously submitted AFS to the NIGC for fiscal years 2016, 2017, 2018, and 2019, indicating that the Casino's fiscal year is a calendar year and ends on December 31st.
- E. Consequently, the AFS for the Tribe's gaming operation for fiscal years 2022 and 2023 were due to the NIGC on or before May 1, 2023, and May 1, 2024, respectively.

¹⁶ Letter to Chairman Sylestine, Alabama-Coushatta Tribe, from NIGC General Counsel Michael Hoenig re: National Indian Gaming Commission's Regulation of Gaming at Alabama-Coushatta Tribe of Texas at 1-2 (Oct. 19, 2022).

¹⁷ 25 U.S.C. § 2710(b)(2)(C).

¹⁸ 25 C.F.R. § 571.12(b).

¹⁹ 25 C.F.R. § 571.13(a).

- F. The NIGC issued a Letter of Concern (LOC) regarding the fiscal year 2022 AFS on September 28, 2023, directing the Tribe to submit the documents within ten (10) days of the LOC. In response to the LOC, the Tribe advised “It remains our position that we are gaming under our Restoration Act, not IGRA, and the NIGC has no regulatory authority over that gaming.”²⁰
- G. Given the Tribe’s failure to submit a fiscal year 2023 AFS, on July 12, 2024, NIGC issued another LOC to the Tribe. The LOC instructed the Tribe to submit the documents within ten (10) days of the LOC. The Tribe responded, reiterating “the Tribe cannot agree to submit to the jurisdiction of the NIGC.”²¹
- H. To date, the Tribe has not submitted fiscal year 2022 and 2023 AFS for the Casino in violation of IGRA, NIGC regulations, and its gaming ordinance.

6. *Measures Required to Correct the Violations*

No remedial action can correct failing to submit fiscal year 2022 and 2023 audited financial statements.²² These documents were due within 120 days of the end of the Tribe’s fiscal year, December 31st. Therefore, the 2022 AFS were due by May 1, 2023 and the 2023 AFS were due by May 1, 2024. The 2022 submission is four hundred ninety-three (493) days overdue and the 2023 submission is one hundred twenty-seven (127) days overdue. **The Tribe is directed to submit to NIGC the fiscal year 2022 and 2023 audited financial statements within ten (10) calendar days of the issuance of this notice of violation.**

7. *Appeal*

The Tribe may appeal this Notice of Violation within 30 days of service by:

- 1) requesting a hearing before a Presiding Official under 25 C.F.R. part 584; or,
- 2) waiving their right to an oral hearing and instead electing to have the matter determined by the Commission solely based on written submissions pursuant to 25 C.F.R. part 585. **Failure to file an appeal within the time provided shall result in a waiver of the right to appeal.**

Any appeal of this Notice of Violation should be submitted to the NIGC at the following address:

NIGC Office of General Counsel

²⁰ Letter to Thomas Cunningham, NIGC COO, from Chairman Sylestine, Alabama-Coushatta Tribe re: Response to Cunningham Letter Dated September 28, 2023, at 2 (Oct. 10, 2023).

²¹ Letter to Thomas Cunningham, NIGC COO, from Chairman Sylestine, Alabama-Coushatta Tribe re: Response to Letter of Concern Dated July 12, 2024, at 2 (Aug. 21, 2024).

²² 25 C.F.R. §§ 542.3(f), 543.23(d), and 571.13(a).

1849 C Street NW Mail Stop # 1621
Washington, DC 20240.

A notice of appeal must reference this Notice of Violation.

If a party elects a hearing under part 584, they must file a brief with the Commission within ten (10) days after filing a notice of appeal, stating with particularity the relief desired and the grounds in support, which may include supporting documentation and evidence in the form of affidavits. If a party prefers a closed hearing, they must include with the brief a request to do so and the reasons therefor. And if a party desires to present oral testimony at the hearing, they must include with their brief the specific names of proposed witnesses and the general nature of their expected testimony.

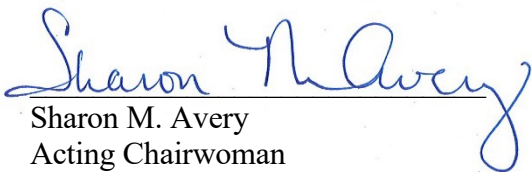
Pursuant to part 585, a party may waive their right to an oral hearing and instead elect to have the matter determined by the Commission solely on the bases of written submissions. To do so, the notice of appeal must reference this Notice of Violation and include a written waiver of the right to an oral hearing before a Presiding Official, electing to have the matter determined by the Commission solely based on written submissions. The appeal brief must be filed within 30 days of the service of the record; succinctly state the relief sought and the supporting grounds therefor; and may include supporting documentation.

8. *Fine-Submission of Information*

The violations in this Notice of Violation may result in the assessment of a civil fine against the Tribe in an amount not to exceed \$63,992 per violation per day.

Under 25 C.F.R. § 575.5(a), each party may submit written information about the violations to the Chair within fifteen (15) days after service of the Notice of Violation (or such longer period as the Chair may grant for good cause). The Chair shall consider any information submitted in determining the facts surrounding the violations and the amount of the proposed civil fine.

Dated this 5th day of September 2024.


Sharon M. Avery
Acting Chairwoman

Certificate of Service

I certify that this **NOV-24-01** was sent by first class mail, certified U.S. mail, return receipt requested, and email on this 5th day of September 2024 to:

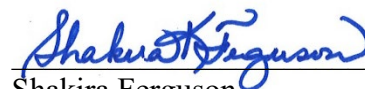
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