



FORM 8-K

Seneca Gaming Corp – N/A

Filed: December 03, 2004 (period: September 16, 2004)

Report of unscheduled material events or corporate changes. e.g acquisition
bankruptcy resignation

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SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of Earliest Event Reported): December 2, 2004 (September 16, 2004)

SENECA GAMING CORPORATION

(Exact Name of Registrant as Specified in Charter)

Not Applicable
(State or Other Jurisdiction of
Incorporation)

333-117633
(Commission File Number)

54-2122988
(IRS Employer Identification
No.)

310 Fourth Street
Niagara Falls, NY (Seneca Nation Territory)
(Address of Principal
Executive Offices)

14303
(Zip Code)

Registrant's telephone number, including area code: **(716) 299-1100**

Not Applicable
(Former name or address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 8.01 Other Events.

On November 2, 2004, the Seneca Nation of Indians held an election for its three Executive Branch officers, the President (Chief Executive Officer), Treasurer (Chief Financial Officer) and the Clerk, and 8 of the 16 members of its legislative branch, or the Council. The first two of the three events reported below are actions taken by the new government at its first Council meeting on November 13, 2004.

On November 18, 2004, our outside legal counsel received a letter from the law firm of Sheppard Mullin Richter & Hampton LLP that it had been appointed by the Seneca Nation of Indians on November 13, 2004 as Independent Counsel to conduct a review of all actions taken, including actions taken by us, in the building, financing, management and operation of the gaming facilities operated within the territory of the Seneca Nation, including, but not limited to, the Seneca Niagara Casino and the Seneca Allegany Casino. The recitals to the Tribal Council resolutions appointing Sheppard Mullin as Independent Counsel state that the Council is appointing Independent Counsel because it has significant concerns regarding the financing, operation and management of the Nation's gaming facilities owned and operated by the Seneca Gaming Corporation and our subsidiaries and by Seneca Gaming and Entertainment Corporation (a separate tribal business enterprise) and that it desires to ensure that the gaming facilities have been constructed, financed, operated and managed by SGC and our subsidiaries and by Seneca Gaming and Entertainment in accordance with their charters and the laws of the Nation, New York State and United States of America. The enacting resolutions further provide that the Independent Counsel is to confirm that all financial transactions were conducted at arm's length, in the best interests of the Nation, free of any conflicts of interest, and in conformity with all applicable laws. We are fully cooperating with Sheppard Mullin and its agents and representatives in its independent inquiry. The above summary regarding the Council resolutions adopted on November 13, 2004 is qualified in its entirety by the Council resolutions adopted on such date, which are filed herewith as Exhibit 99.1 and are incorporated herein by reference.

On November 23, 2004, we received a copy of Tribal Council resolutions dated November 13, 2004, which appointed a Class II Management Committee to develop policies and procedures to govern the Nation's Class II Facilities located on its Allegany Territory, which include our operation of the Seneca Allegany Bingo Facility. The resolutions provide that the Class II Management Committee is to submit the proposed Class II policies and procedures to Council for consideration at its next regularly scheduled meeting in January 2005. The November 13, 2004 resolutions further provide that all revenues generated by the Nation's Class II facilities shall be transferred directly to the Nation instead of to us. Through subsequent discussions with executive officers of the Nation, we have been informed that, notwithstanding the foregoing resolutions, the Council wants the Seneca Allegany Bingo Facility transferred to the Nation on January 1, 2005. We are in the process of transferring the Seneca Allegany Bingo Facility to the Nation by such date. We opened and began to operate the Seneca Allegany Bingo Facility on May 1, 2004. During the 5 months ended September 30, 2004, we have invested approximately \$2.1 million in renovating and upgrading the Seneca Allegany Bingo Facility and have received approximately \$1.5 million of operating income from this Facility during this period. The above summary regarding the Council resolutions adopted on November 13, 2004 is qualified in its

entirety by the Council resolutions adopted on such date, which are filed herewith as Exhibit 99.2 and are incorporated herein by reference.

We previously reported on the August 17, 2004 decision of the Nation's Supreme Appellate Court to overturn an earlier decision of the Nation's Court of Appeals with respect to the organization and governance of our company and its subsidiaries and removing the case reported on and related matters from the jurisdiction of the Court of Appeals. Under the Nation's Constitution, the Nation's Supreme Appellate Court is the Nation's highest court and its decisions are not subject to review by any other Tribal court. Notwithstanding this decision, on September 16, 2004, the Court of Appeals held that the Supreme Appellate Court's August 17, 2004 decision was illegal, invalid and of no force and effect due to the violation of Seneca Nation of Indians Rules of Appellate Procedure, among other reasons. The Court of Appeals remanded the case to the Peacemakers' Court and ordered this court to convene and hear the original case with its bench rulings in effect within 30 days of the September 16, 2004 Court of Appeals Order. On September 28, 2004 we requested by letter to the Supreme Appellate Court clarification that its decision in fact controls. As of this date, we have not received any response to our inquiry. The Peacemaker's court has not convened as of this date to consider this matter.

Item 9.01 Financial Statements and Exhibits

The following exhibits are filed as a part of this Current Report on Form 8-K:

(c) Exhibits

- 99.1 Seneca Nation of Indians Tribal Council Resolutions adopted on November 13, 2004 appointing an Independent Counsel.
- 99.2 Seneca Nation of Indians Tribal Council Resolutions adopted on November 13, 2004 appointing a Class II Management Committee.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned hereunto duly authorized.

SENECA GAMING CORPORATION
(Registrant)

Date: December 2, 2004

/s/ Barry W. Brandon
Name: Barry W. Brandon
Title: Senior Vice President and General
Counsel

EXHIBIT INDEX

Exhibit No.	Description
*99.1	Seneca Nation of Indians Tribal Council resolutions appointing an Independent Counsel.
*99.2	Seneca Nation of Indian Tribal Council resolutions appointing a Class II Management Committee.

*Filed herewith

Seneca Nation of Indians

President – Barry E. Snyder, Sr.
Clerk – Geraldine Huff

12837 ROUTE 438
IRVING, NEW YORK 14081

Tel. (716) 532-4900
FAX (716) 532-9132



Treasurer – Maurice A. John

P.O. BOX 231
SALAMANCA, NEW YORK
14779

Tel. (716) 945-1790
FAX (716) 945-0150

SENECA NATION OF INDIANS AT THE REGULAR SESSION OF COUNCIL OF THE SENECA NATION OF INDIANS HELD ON NOVEMBER 13, 2004, AT THE G.R. PLUMMER BUILDING ON THE ALLEGANY INDIAN RESERVATION, SALAMANCA, NEW YORK 14779

CN: R-11-13-04-19

EXECUTIVES PRESENT:

PRESIDENT
TREASURER
CLERK

BARRY E. SNYDER, SR.
MAURICE A. JOHN
GERALDINE HUFF

APPOINTMENT OF AN INDEPENDENT COUNSEL TO INVESTIGATE THE NATION'S CASINO DEVELOPMENT AND MANAGEMENT/APPROVAL

MOTION: by Michael L. John, seconded by Arlene Bova, that Tribal Council approves the following:

WHEREAS, Section I of the Constitution of the Seneca Nation of Indians of 1848, as amended, vests the Legislative Authority of the Seneca People in the Nation's Council; and

WHEREAS, the Preamble to the Nation Constitution provides that one of the purposes of the Nation government is "to provide for ourselves greater safeguards to pursuit of life, liberty and happiness"

WHEREAS, the Gaming Industry is of vital importance to the economy of the Nation and the general welfare of the Seneca People; and

WHEREAS, the Nation has significant concerns regarding the financing, operation and management of its Gaming Facilities operated by the Seneca Gaming Corporation, the Seneca Territory Gaming Corporation, the Seneca Niagara Falls Gaming Corporation, the Seneca Erie Gaming Corporation and the Seneca Gaming and Entertainment Corporation (hereinafter referred to collectively the "Companies"); and

WHEREAS, the Nation desires to ensure that the Gaming Facilities have been constructed, financed, operated and managed by the Companies in accordance with their Charters and the laws of the Nation and, because of the significant influence of non-Seneca individuals and entities in the development of the Gaming Facilities, the laws of the State of New York and the United States of America;

NOW, THEREFORE, BE IT RESOLVED that Roscoe C. Howard, Jr. and the law firm of Sheppard Mullin Richter & Hampton, LLP (hereinafter collectively the "Firm") are hereby appointed as Independent Counsel to conduct an independent review of the actions taken by the Companies, the Nation, and any of their organizational components, officers, agents and employees regarding the construction, financing, management and operation of the Nation's Gaming Facilities.

FURTHER RESOLVED, that the independent review shall be conducted as follows:

1. The Firm shall retain qualified forensic auditors and such other consultants as the Firm may deem necessary to conduct a thorough review of all financial transactions conducted by or on behalf of the Companies relating to the Gaming Facilities, as well as the construction, management and operation of the Gaming Facilities, to determine whether all financial transactions were *inter alia*

conducted at arm's length, in the best interests of the Nation, in accordance with the Companies' fiduciary and other responsibilities to the Nation, free of any conflicts of interest, and in conformity with all applicable and pertinent laws.

2. The Firm shall have the authority to interview any officers, employees and staff of the Companies, the Nation and any affiliated entities to determine their knowledge of the matters under inquiry. Any independent auditors or outside counsel retained by the Companies may be similarly interviewed. Insofar as the laws of the Nation and other applicable laws currently in effect or hereafter adopted may permit, the Firm shall seek to obtain waivers of attorney-client or other privileges and/or utilize any statutory provisions limiting the application of such privileges to the matters under investigation. Wherever practicable, these interviews shall be conducted on a voluntary basis.

3. The Firm shall have the authority and power to subpoena documents and testimony from the Companies, the Nation, and their officers, agents and employees, and any other person or entity to which such subpoena authority could be directed under any applicable law. All interviews and other information-gathering processes will be conducted in accordance with applicable laws of the United States of America and the State of New York regarding criminal and civil law enforcement investigations, except insofar as Nation law provides otherwise.

4. Thirty (30) days subsequent to the passage of this Resolution, the Firm shall apprise the Council or its designee of the progress of the investigation to that point and the preliminary findings, if any, that the Firm has made as of that date.

5. Within ninety (90) days of the passage of this Resolution, the Firm shall provide the Council with a preliminary written report of its findings. If any additional time is deemed necessary to complete the investigation, the report will identify, to the extent practicable and consistent with sound investigative practice, the additional steps remaining to be taken and an estimate of the time necessary to complete them.

6. If any officers, agents or employees of the Company or the Nation do not provide full and complete cooperation in connection with the Firm's investigation, the Firm shall immediately report such officers, agents or employees of the Company or the Nation to the Council, and the Council shall take any and all actions permitted by applicable law to obtain full and complete cooperation.

**FURTHER
RESOLVED,**

that the President of the Nation, is hereby authorized and directed to sign and enter into an engagement letter agreement, with the Firm on the Nation's behalf.

**FURTHER
RESOLVED,**

that there is hereby appropriated ten thousand dollars (\$10,000) as the initial retainer for the Shepard Mullin law firm.

ROLL CALL: 16 YES

MOTION CARRIED

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Regular Session of Council of the Seneca Nation of Indians held on November 13, 2004 on the Allegany Indian Reservation, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the G.R. Plummer Building on the Allegany Reservation, Salamanca, New York 14779, on the 17th day of November, 2004.

ATTEST:

{SEAL}

/s/ Geraldine Huff
Geraldine Huff, Clerk
SENECA NATION OF INDIANS

Seneca Nation of Indians

President – Barry E. Snyder, Sr.
Clerk – Geraldine Huff

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SENECA NATION OF INDIANS AT THE REGULAR SESSION
OF COUNCIL OF THE SENECA NATION OF INDIANS HELD
ON NOVEMBER 13, 2004, AT THE G.R. PLUMMER
BUILDING ON THE ALLEGANY INDIAN RESERVATION,
SALAMANCA, NEW YORK 14779

CN: R-11-13-04-15

EXECUTIVES PRESENT:

PRESIDENT
TREASURER
CLERK

BARRY E. SNYDER, SR.
MAURICE A. JOHN
GERALDINE HUFF

REASSERT MANAGEMENT AND FINANCIAL AUTHORITY OVER CLASS II GAMING OPERATIONS/APPROVAL

MOTION: by Linda Doxtator, seconded by Donald John, that Tribal Council approves the following:

WHEREAS, the operation of the Seneca Nation’s Class II gaming facilities located in the Allegany Territory are currently being operated under the authority of the Nation’s Class III gaming facilities located at the Allegany Territory; and

WHEREAS, the need now arises to restore more direct authority over the Nation’s Class II gaming facilities to the Nation’s Council and Executives.

NOW, THEREFORE, BE IT RESOLVED, that the Class II Management Committee shall not take immediate control of the Class II Facilities, but shall develop policies and procedures governing its operations, such policies and procedures to be submitted to Council for consideration at its Regular Session scheduled for January, 2005;

FURTHER RESOLVED, that all revenues generated by the Nation’s Class II facilities shall not be transferred to the Nation’s Class III gaming facilities but instead shall be transferred directly to the Nation government.

ALL IN FAVOR

MOTION CARRIED

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Regular Session of Council of the Seneca Nation of Indians held on November 13, 2004 on the Allegany Indian Reservation, original of which is on file in the Clerk’s Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the G.R. Plummer Building on the Allegany Reservation, Salamanca, New York 14779, on the 17th day of November, 2004.

ATTEST:

/s/ Geraldine Huff
Geraldine Huff, Clerk
SENECA NATION OF INDIANS

{SEAL}