

205 CMR 125.01 (6) (c) as amended

c. Binding Arbitration Procedure.

1. The applicant and surrounding community may, by mutual agreement, engage in this binding arbitration procedure at any time after the date the surrounding community determination is made by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2). Provided, however, the parties must engage in this binding arbitration procedure if no surrounding community agreement is filed with the commission within 30 days of the date the surrounding community designation is made by the commission in accordance with 205 CMR 125.01(1)(a) or 125.01(2).
2. The parties shall file with the commission a notice of intent to commence arbitration prior to selecting an arbitrator.
3. No later than 5 days after the passage of 30 days since the surrounding community designation is made by the commission in accordance with 205 CMR 125.01(1) (a) or CMR 125.01(2) the parties shall select a neutral, independent arbitrator and submit their best and final offer for a surrounding community agreement pursuant to M.G.L. c. 23K, §15(9) to the arbitrator and to the other party. The best and final offer shall be in the form of an executable surrounding community agreement. If they cannot mutually select such single arbitrator, each party shall select one neutral, independent arbitrator who shall then mutually choose a third neutral, independent arbitrator. In the event that a third neutral, independent arbitrator is not selected within the 5 day period, the commission or its designee shall select the third neutral, independent arbitrator. The 3 arbitrators shall preside over the matter and resolve all issues, including the final decision, by majority vote.
4. In conjunction with the filing of its best and final offer submitted in accordance with 205 CMR 125.01(6)(c)(3), the applicant shall submit a copy of the surrounding community agreements it has executed with other surrounding communities concerning the applicant's proposed gaming establishment. Either party may submit executed surrounding community agreements from other proposed gaming establishments in the commonwealth which the party considers relevant.
5. The reasonable fees and expenses of the single arbitrator shall be paid by the applicant. In the event that 3 arbitrators are engaged, two thirds of the reasonable fees and expenses shall be paid by the applicant and one third shall be paid by the surrounding community.
- ~~5.~~ 6. Within five (5) days of the filing of its best and final offer submitted in accordance with 205 CMR 125.01 (6) (c) (3) if a party (the "objecting party") believes that the best and final offer submitted by the other party contains a term or terms that are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K-, the objecting party shall file with the

commission and contemporaneously serve on the other party a petition that includes the best and final offer submitted by each party, a list of all of the terms that the objecting party believes are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K, the reason that the objecting party believes such terms are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K, any evidence supporting the objecting party's position, and a request that if the other party's best and final offer is selected by the arbitrator the commission hold a hearing to review whether the term or terms listed by the objecting party are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K. Upon receipt of the petition, the commission shall schedule a hearing at a public meeting to be held no later than three (3) days after the arbitrator issues its report pursuant to 205 CMR 125.01 (6) (c) (7).

If a petition is filed with the commission pursuant to 205 CMR 125.01(6) (c) (6), both parties shall contemporaneously file with the commission a copy of all documents filed with the arbitrator during the arbitration.

7. Within 20 days after receipt of the parties' submissions under 205 CMR 125.01(6) (c) (3), the arbitrator(s) shall conduct any necessary proceedings and file with the commission, and issue to the parties, a report specifying the terms of the surrounding community agreement between the applicant and the community. In reaching ~~the final its~~ decision, the arbitrator(s) shall select the best and final offer of one of the parties and incorporate those terms into the report. ~~The arbitrator(s) may make adjustments to the selected best and final offer only if necessary to ensure that the report is consistent with M.G.L. c. 23K.~~

8. If neither party requested a hearing pursuant to 205 CMR 125.01 (6) (c) (6), then no later than 5 days after the issuance of the report of the arbitrator(s) as provided in 205 CMR 125.01(6)(c)(6), the parties shall sign a surrounding community agreement and file it with the commission in accordance with M.G.L. c.23K, §15(9) and 205 CMR 125.01(3) or the arbitrator's report shall be deemed to be the surrounding community agreement between the parties. If a hearing has been requested pursuant to 205 CMR 125.01 (6) (c) (6), the decision of the arbitrator shall become final in accordance with the provisions of 205 CMR 125.01(6)(c)(11).

9. In accordance with 205 CMR 125.01(6) (c) (6), ~~t~~The commission shall hold a public hearing on the objecting party's petition. At the hearing the commission shall review the submissions of each party and take testimony from the parties in

the commission's discretion. At the conclusion of the public hearing the commission may:

- a. determine that the terms of the best and final offer selected by the arbitrator are consistent with c. 23K and that the arbitrator's decision shall be the surrounding community agreement between the parties; or
- b. determine that the best and final offer selected by the arbitrator contains a terms or terms that are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K -

10. If the commission determines that the best and final offer selected by the arbitrator contains a term or terms that are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K, the commission shall modify, cause to be modified or remove the terms that are fundamentally inconsistent with a provision or with the purposes of G.L. c. 23K. No later than five (5) days after the commission's decision the parties shall sign the surrounding community agreement and file it with the commission in accordance with M.G.L. c.23K, §15(9) and 205 CMR 125.01(3) or the arbitrator's report, as modified by the commission, shall be deemed to be the surrounding community agreement between the parties.

11. The arbitrator's decision shall be deemed final once the commission makes its determination pursuant to 205 CMR 125.01 (6) (c) (9) or (6) (c) (10).

12. In the absence of an objection filed in accordance with 205 CMR 125.01(6) (c) (6), the decision of the arbitrator shall be final and binding and shall not be subject to further review. If an objection has been filed in accordance with 205 CMR 125.01(6) (c) (6), the decision of the arbitrator shall become final in accordance with 205 CMR 125.01(6) (c) (11) and shall not be entitled to further review.

REGULATORY AUTHORITY

205 CMR 125: M.G.L. c.23K, §§4(37); 5; and 17.

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