



## MASSACHUSETTS GAMING COMMISSION

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### MEMORANDUM

**To:** Region A Surrounding Communities and Applicants

**From:** John S. Ziemba, Ombudsman  
Catherine Blue, General Counsel

**Date:** April 18, 2014 **as amended May 8, 2014**

**Re:** Region A Arbitration Extension Requests

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At its April 17<sup>th</sup> meeting, the Commission delegated the authority to the Ombudsman's office to approve extensions to the deadlines specified in the Commission's regulation, 205 CMR 125.01 (6)(c), for a period of up to fourteen (14) calendar days provided that such extension requests are mutually agreed upon by both the applicant and the community. For example, if a community and an applicant believe that 10 calendar days of additional negotiation prior to the filing of best and final offers would be useful to avoid arbitration, they could use 10 of the 14 calendar days to negotiate. If arbitration is unfortunately still necessary, the parties would utilize the procedures (including the deadlines) in the Commission's regulation to arbitrate the disagreement starting after the 10 day stay period. If the parties encounter an unanticipated difficulty in meeting the Commission's arbitration deadlines, the parties would have the remaining 4 days to use to remedy the difficulty. Under this more flexible approach, communities and applicants would have more leeway to address issues they may encounter in meeting the Commission's deadlines.

Communities and applicants may use some or all of the 14 calendar days to do the following:

1. Stay the Beginning of Arbitration. Applicants and communities are currently required to select an arbitrator or arbitrators and to submit best and final offers no later than 5 days after the passage of the 30 day statutory negotiation period. Under this more flexible approach approved by the Commission, communities and applicants can extend this 5 day period by some or all of the flexible period of 14 calendar days. Thus, parties may continue to negotiate without having to finalize best and final offers and arbitrators.
2. Extend the Fundamentally Inconsistent Petition ("FIP") Filing Deadlines. Parties are required to file FIPs no later than 5 days after best and final offers are submitted to arbitrator(s). Parties may want to extend this deadline to foster negotiations and avoid a contentious filing that may otherwise not be necessary. Under this more flexible approach, parties could extend a FIP filing. However, in order to ensure that arbitrator(s)



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and the Commission staff have enough time to consider FIP objections, the FIP filing must be made before the beginning of any hearings by the arbitrator(s) and must be made in enough time for the Commission staff to review such FIP filing prior to the time arbitrator(s) reports are made to the Commission.

3. Extend Arbitrations. Arbitrators are required to conduct arbitrations and issue a report within 20 days after the filing of best and final offers under the Commission's current regulations. Under the more flexible approach, the parties can provide arbitrators with some or all of the additional 14 calendar days to conduct the arbitration and issue the reports.
4. Extend the Post-Arbitration Period. After an arbitration report is finalized by the arbitrator or by the Commission (assuming a petition for fundamental inconsistency with MGL c. 23K), the parties have 5 days to reach a surrounding community agreement or the finalized arbitrator's report shall be deemed to be the surrounding community agreement between the parties. Under the process approved by the Commission, the parties can use some or all of the 14 calendar days to conduct post-arbitration negotiations longer than the 5 days allotted in the Commission's regulation.

In order to utilize the additional days, both the applicant and the community are required to notify the Ombudsman of the number of additional days no later than the following:

1. Stay the Beginning of Arbitration - No later than ~~the day prior to~~ the date for the selection of an arbitrator or arbitrators and the filing of a best and final offer.
2. Extend Arbitrations – No later than the day the arbitrator's report would otherwise be required.
3. Extend the Post-Arbitration Period – No later than the day after the arbitrator's report is finalized by the arbitrator or arbitrators or by the Commission.

All extension requests should be filed with the Ombudsman's office at [john.s.ziembra@state.ma.us](mailto:john.s.ziembra@state.ma.us) with a copy to the General Counsel's office at [catherine.blue@state.ma.us](mailto:catherine.blue@state.ma.us).

The potential additional days will not be available to delay a Commission hearing or determination on a fundamental inconsistency petition.

Any community with questions regarding this process should contact the Ombudsman's office at 617-979-8420.



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