

March 14, 2014

Massachusetts Gaming Commission
84 State Street, 10th Floor
Boston, MA 02109

Dear Massachusetts Gaming Commission,

On behalf of Mass Gaming & Entertainment, LLC, we respectfully submit the following as my client considers its interest in pursuing the Category 1 license in Region C:

- 1) A request for a variance from regulation 205 CMR 122, pursuant to 205 CMR 102.3(4); and
- 2) Comments on the Region C application timeline.

Chapter 23k of An Act Establishing Expanded Gaming in the Commonwealth, Chapter 194 of the Acts of 2011 (the "Act") is fundamentally designed to obtain the greatest possible benefits from licensing gaming establishments in the Commonwealth by selecting successful applicants through a competitive selection process. Further, Chapter 23k, Section 1(10) states that the Commission's authority shall be construed broadly to implement Chapter 23k. Adopting the requested variance and adjustment of the application timeline will advance the purposes of Chapter 23k by 1) encouraging competition for the Category 1 license in Region C and 2) promoting the sustainable financial viability of the Region C gaming establishment.

Part 1: Request for a Variance from Regulation 205 CMR 122

We are requesting a variance from the Commission's regulation (which would apply to all applicants for a Category 1 license in Region C) concerning how the amount of capital investment is calculated. We believe that certain items excluded from the calculation pursuant to 205 CMR 122.04 should be included to be consistent with industry norm for what would count towards a project budget and to right-size the investment for the size and risks of the Region C market. Our specific request is explained further at the end of this Part 1.

Background:

Section 10(a) of the Act reads in part:

Section 10. (a) The commission shall set the minimum capital investment for a category 1 license; provided, however, that a gaming licensee shall make a capital investment of not less than \$500,000,000 into the gaming establishment which shall include, but not be limited to, a gaming area, at least 1 hotel and other amenities as proposed in the application for a category 1 license; and provided further, that the commission shall determine whether it will include the purchase or lease price of the land where the gaming establishment will be

located or any infrastructure designed to support the site including, but not limited to, drainage, utility support, roadways, interchanges, fill and soil or groundwater or surface water contamination issues...

The recited section of the Act calls for a minimum capital investment of \$500 million and permits the Commission to determine whether the cost of land and certain infrastructure improvements will be included in the calculation of the capital investment. Pursuant to 205 CMR 122.04(1) and (4), the Commission has excluded land and off-site infrastructure costs from this calculation. Further, pursuant to the rest of 205 CMR 122.04, the Commission additionally has excluded several other legitimate, and significant, out-of-pocket project costs from this calculation that commonly are considered as part of a project budget, including by lenders for financing purposes.

We have put together a legitimate out-of-pocket project budget of approximately \$700 million, which is well in excess of the \$500 million requirement, but which does not meet the minimum capital investment as limited under 205 CMR 122. Only approximately \$375 - \$400 million of our current preliminary project budget would count towards the minimum capital investment pursuant to 205 CMR 122.

Consequently, although my client is prepared to spend substantially over \$500 million, as required by the Act, in order to satisfy 205 CMR 122, if it were to participate in Region C, it would be forced to spend more than what it believes the Region C gaming establishment can support. Therefore, under the current regulation without a variance, my client likely would decide to not compete for the Category 1 license in Region C because such a high expenditure would not be a financially prudent business decision based on the gaming market in Region C.

Importantly, the Act does not require the calculation of the capital investment to exclude items excluded under 205 CMR 122. The Act explicitly discusses land and certain infrastructure improvements, and gives the Commission the discretion to include or exclude such costs. Further, by omission, the Act does not contemplate the exclusion of certain other legitimate and significant project costs excluded under 205 CMR 122.04.

Rationale:

We respectfully provide the following rationales for this requested variance from regulation 205 CMR 122, which rationales correspond to the requirements in 205 CMR 102.3(4) for granting a variance:

1. Granting the variance is consistent with the purposes of M.G.L. c. 23k.

Adopting the requested variance will further the purposes of Chapter 23k by a) encouraging competition for the Category 1 license in Region C and b) promoting the sustainable financial viability of the Region C gaming establishment.

Potential applicants interested in Region C, after understanding the consequences of 205 CMR 122, may determine that the required capital investment under the regulation (which exceeds what the Act requires) is too burdensome and carries too much risk, and

therefore, elect to not pursue the Region C license.

Region C poses unique risks, which the applicants for the Category 1 licenses in Regions A and B do not face. Specifically:

- a. Most importantly, a tribal casino may open in Region C, making the Region C applicants the only ones that need to consider the possibility of another full resort casino in their region. Further, the tribal casino would not pay gaming taxes, so it would have a major competitive advantage by having the ability to spend significantly more on marketing and promotions to acquire and retain customers. In addition, a tribal casino would operate under a different set of operating standards and potentially conduct Internet gaming even though commercial operators could not. Although no one knows when a tribal casino will be built, if ever, Region C applicants must take the possible impact on their operations from a tribal casino into account when determining an appropriate capital budget for Region C.
- b. Due to the substantial competition around Region C, the Region C licensee likely will face a smaller market than the licensees in Regions A and B, even before a potential tribal casino opens. The Category 2 licensed facility will be located at Plainridge Racetrack, in very close proximity to Region C. Further, Twin River Casino and Newport Grand Slots in Rhode Island are much closer to Region C than the other regions.¹

Consequently, the Region C licensee rationally cannot spend as much as the other Category 1 licensees. Overbuilding, or building more for the sake of building more (even if the market does not justify the supply), leads to underutilization and financial distress, which both the Region C licensee and Commonwealth should want to avoid.

2. Granting the variance will not interfere with the ability of the Commission or the Bureau to fulfill its duties.

A number of the excluded costs in 205 CMR 122.04, such as land, pre-opening interest expenditure, off-site infrastructure improvements, and upfront mitigation costs are legitimate project costs, which a casino developer or any other type of commercial developer would consider project costs.

Further, with a project budget of over \$500 million, Mass Gaming & Entertainment, LLC can develop, and intends to develop, a world-class gaming destination. It can still deliver the “wow factor”, but it needs to fit the size of the project to the size and risks of the market.

¹ The Mohegan Sun and Foxwoods casinos in Connecticut are approximately the same distance to Springfield as to the potential Region C locations.

A first-class development which is financially responsible not only allows the Commission to fulfill its duties but helps it to do so. The requested variance would not interfere with the Commission or the Bureau in doing their duties with respect to reviewing the Phase 2 applications and awarding the Category 1 license in Region C to a deserving applicant and project which will be an asset for the region.

3. Granting the variance will not adversely affect the public interest.

Granting the variance will not adversely affect the public interest. Conversely, not granting the variance would adversely affect the public interest, especially for the public and communities located in Region C. The region needs economic development, including a catalyst for further employment and tourism, and a truly competitive process to award the Category 1 license in Region C will support those objectives by encouraging better proposals. Furthermore, forcing the licensee in Region C to spend more in capital investment than what the Region may be able to justify puts the financial viability of the gaming establishment at risk, when the sustainable financial health of the gaming establishment will be best for the Region C economy. The Act finds and declares that these are truly important aspects of the Act.

4. Not granting the variance would cause substantial hardship to the person requesting the variance.

Not granting the variance would cause substantial hardship since it will discourage Mass Gaming & Entertainment, LLC (and likely other potential applicants) from pursuing the Region C license. To require applicants to spend more than what Region C can support in light of the region's unique risks and competitive dynamics creates a hardship.

For the reasons provided above, we believe that the requirements to grant a variance are satisfied and granting the variance would benefit the Commonwealth.

Request:

We request a variance from regulation 205 CMR 122 (to apply to all applicants for a Category 1 license in Region C) such that subparts 1, 2, 3, and 4 in 205 CMR 122.04 are included in the calculation of the capital investment.

We are not requesting that the other subparts of 205 CMR 122.04 be included in the calculation of the capital investment, even though most or all of such costs would generally be accepted as part of a project budget, including by lenders for financing purposes, and all require invested capital.

Part 2: Comments on the Region C Application Timeline

Although it is difficult at this stage to assess the amount of time that will be necessary for applicants in Region C to be ready to submit their RFA-2 applications, we propose a revised RFA-2 application deadline of December 31, 2014, subject to our variance request being resolved by March 31, 2014, which will attract more eligible Phase 1 approved applicants to consider bidding for the Region C license.

Considerable time will be necessary for applicants to complete the following tasks in a thoughtful and comprehensive manner:

1. Negotiate and enter into a host community agreement, and subsequently, for the host community to conduct a public referendum;
2. Negotiate and enter into surrounding community agreements;
3. Obtain zoning approvals;
4. As part of the MEPA process, prepare an Environmental Notification Form (ENF) and receive a scoping certificate from the Executive Office of Energy and Environmental Affairs after a period of public comment; and
5. Prepare the RFA-2 application, which is very comprehensive.

Further, in the event any of the applicants have additional qualifiers in connection with their application in Region C, the Commission will need time to investigate those parties.

We sincerely appreciate your consideration of our variance request and comments on the timeline.

Sincerely,

/s/ John M. Donnelly

John Donnelly

Donnelly Clark

On behalf of Mass Gaming & Entertainment, LLC