

**EIC C-PACE Advisory Committee Meeting
November 29, 2018 Minutes**

Susan Morth/EIC: Good Morning everyone. We have quite a few callers on the line and it is 11:00am, so I guess we will get started. Thank you for attending this morning's call. There are two things on the agenda, but as always we are happy to take any questions from all of you during this call or at the end of this call. First off, we sent a draft of the Pay When Received Handbook (PWR) which is something that is very important to the new program so that folks understand how to determine a project is eligible in New York State and how we are going to qualify under NYSERDA's new C-PACE guidelines. The fact that we are using a cost benefit ratio now in NY rather than a savings-to-investment ratio. Taking a look at the role of PWR capital providers which is going to be to really prepare the application and gather all the documents we require in order to approve the project here in NY. Also, we want to update you, we have had some conversations following-up on the outline from non-bond template that we shared with the group last time we spoke and some revisions we made to that and we will share it again on the call next month as we work to complete the program documents.

With me today is Robert Fischmann, who is our in-house engineer and is the gentleman at EIC that is responsible for reviewing the eligibility of projects and the approval of them to move forward to be financed here in NYS and I'm not sure if anyone has had a chance to look through the new Handbook and if there are any questions, please feel free to just jump in. Are there any questions? So, we can go back to the Handbook, this time I'm wondering if Aaron Ordower is on the call, he was going to update us on the NYC PACE news.

Cliff: I don't have questions on the document. I apologize, over the holidays I didn't realize it was in our inboxes. Is this the document you circulated with the agenda notice?

Susan: Yes, this is the document circulated with the agenda notice, draft of the handbook, for those on the phone that aren't familiar with NYS, again as the program administrator in NYS we don't create C-PACE Guidelines, NYSERDA does here for both the State's and New York City's program. Importantly, there are links in this document that will take you to the new C-PACE Guidelines and also take you to a separate document which talks about how to calculate and satisfy NYSERDA's cost-to-benefit ratio, those are really important documents to take a look at and really would explain why our Handbook for PWR PACE is really only three pages long. You just need to comply with Article 5L, which is New York State's enabling legislation and you need to comply with the NYSERDA Guidelines. We are here to check that both of those mandates have been complied with in order to approve your project.

Cliff Kellog: Ok, I think, because I didn't recognize that the three page document was the Handbook because it is so much briefer than handbooks in the past. I certainly will circulate it among capital providers that I work with and will come back to you with comments, but it may take a little time as we are approaching the end of year.

Susan: No issues at all.

Brandon Lewis/PFM: I just want to verify that the 1 1/2% of total project cost up to \$75,000 is an application fee and not a closing fee or other type of fee. Is that correct?

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Susan: I believe that is not an application fee, that would not be termed an application fee per se, that is really the amount that is owed to EIC as an up-front cost, the 1 ½%, that's our administrative fee really and ongoing we have a residual fee of 25 basis points. I think the application fee is misleading.

Brandon/PFM: Okay, the substance of what you describe makes more sense.

Susan: We will delete that, thank you, Brandon. If there are no other questions on the Handbook, we can ask Aaron to update us on the New York City program?

Aaron Ordower/Senior Policy Advisor, NYC Mayor's Office of Sustainability: Good morning everyone, thank you to EIC for allowing us to participate on these calls and giving us the chance to update folks today on our exciting news from NYC. Yesterday, the City Council introduced our PACE authorizing legislation which as you many of you know we have been working on for quite some time and that bill which would need to get passed in the City before we could have a program here is set to have a hearing next Tuesday at 10am in the City Hall in the Council Chambers and everybody is welcome to participate in that hearing. Come show your support in having a PACE program in NYC and there is also an opportunity to provide written testimony if you are not able to be there in person. We are very excited about that. I think many of you that have been following NYC know that this has been delayed for a little more than a year now because the City has been working through the introduction of a complimentary bill that is a separate bill that would regulate greenhouse emissions in all of our buildings above 25,000 square feet. Setting a target not just for new buildings but for existing buildings. What we are referring to as an energy performance mandate and that bill was also introduced yesterday. While it took a while to get both to this point, we think it's real exciting because that combination of an energy performance mandate that will really drive the energy efficiency and clean energy market in NYC tremendously. We think also of course help to drive the market for financing energy efficiency and are we're happy that PACE is sort of being introduced as the complimentary financing tool to help project buildings do just that. The bills are online I can help circulate links if it's of interest to this group, I can answer a couple of questions now if there are any.

Josh/Petros: I did have a question. Has there been any discussion about the relationship between NYC's PACE program and the delinquent tax lien securitization program for the other delinquent charges.

Aaron: That's a nuance, that's a structural challenge that we have been working on for the last few years. We do have an agreement with how that would be worked out in terms of properties that do have liens that are under the tax lien securitization program. We are sort of working through the nitty gritty of every possible scenario to prepare for alternate agreements between project originators and the administrator. We have a draft that if there's interested capital providers would be happy to bounce that around but do you have a more specific question right now?

Josh: I can't say a specific question, I'm just curious to know because I know that has been part of a stumbling block to an effective program in the City is making sure that capital providers have some security knowing how their particular delinquency would be resolved.

Aaron: You'll see in the note that if you look at the draft legislation there is a condition that the City strongly believes that it needs to be made whole on its own property and water charges to municipal charges before PACE charges is passed along to the capital providers. We have gotten our office of

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management and budget and department of finance comfortable with having PACE charges entered into the tax lien sale process and having a process to make sure that there is certainty over how capital providers will be paid back in those situations. There are certain cases where we do actually do have the power to do in rem foreclosure which we expect would be a pretty rare occurrence but is sort of a backup opportunity that we have in case there are certain type of charges that don't trigger the tax lien sale as the tax law is written right now in the City.

Cliff: I just want to offer, you said there is a draft, is it a side memo or draft document? Not sure what actual legal standing it has in this process, local tax lien securitization is certainly a front and center issue for capital providers that I have spoken to.

Aaron: You've heard that from many of the capital providers, of course. We got to this milestone just yesterday actually, as the bill got introduced so we've been working with some of you on the call to work through draft program guidelines, draft administrator agreements with creditors, etc. and this is one of the pieces that we are working through with our department of finance and office of management and budget and law department and so I think when we feel comfortable with some internal consensus with all of the details we plan to vet that with some of you but we don't have something today that we are able to share.

Cliff: And Aaron, it read to me that when I read through the legislation it appeared this would also permit the development of a residential PACE program. Was that the intent?

Aaron: As you all know we do not yet have the authority to do that in NYS but the legislation does not specify commercial versus residential so as it's written now there is no preclusion for us having standards for residential PACE if the state does move in that direction. As you all know from working with EIC, we can only move once NYSERDA and the other agencies give us that guidance.

Cliff: And could you describe if there will be a process for selecting the program administrator or is that pretty well settled?

Aaron: We have been working for the last eight years with New York City Energy Efficiency Corporation (NYCEEC) which many of you know. They have had an open contract with the City for many years to help us design and ultimately launch a PACE program, so our idea here is to have an open PACE market where multiple capital providers can participate but with having a sort of a light touch administrator in NYCEEC to actually ensure compliance with the State law, with the program guidelines as harmonized as possible with the standards that are in the program run by Energize.

Cliff: And of course in NYC there may be limited opportunities for new construction but could you describe what's intended, is this intended to cover and be permitted for new construction or how do you see it?

Aaron: Yes, it certainly something we are interested in but we've been working with EIC on an engagement with NYSERDA to make a case for that and currently if Susan and Mark want to elaborate on any further conversations they've had in the last couple of months, but we are still waiting for a final determination from NYSERDA that we are in fact able to use PACE for new construction here in NYS.

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Susan: Just to jump in, thank you Aaron, briefly we do have further comments on where we are on that and I'm going to let Mark answer the question about new construction and where we are with NYSERDA approval on that.

Mark Thielking: As you know, we are very eager to see new construction to be allowed to be used to be used for energy efficiency projects. As you all probably know, renewable energy technology, renewable construction is allowed. What we are talking about here is for energy efficiency measures to be included in a new construction project. There are two pathways that can be taken. One is to change the statute which is a daunting task and the other is to modify the guidelines that NYSERDA has issued based on the statute and that is the approach we are taking right now which will include a legal review of the statute and other similar situations where authorities have allocated an opinion as to how the statute can be interpreted. So, we are on that pathway now, we are not sure when we will get a decision on that but if it all fails on that approach then we would be forced to go back to change the statute.

Susan: Just for a small amount of edification, we are expecting a legal opinion on this issue that we are then going to be sharing with NYSERDA a determination will be made. That part of what we are doing is happening right now so there won't be a huge delay and movement on new construction and as Mark said I think June is the month we would be looking at if worse came to worse and we had to think about opening the state law to change Article 5L to specifically include new construction. Everyone is on the same page in feeling that is important to a successful PACE program, there's no argument or friction; everyone is in agreement and working together to make sure NYS and NYC program are the most robust in the country. Rest assured we are not twiddling our thumbs on that issue.

Cliff: And Aaron, the ordinance speaks about that no loan shall be made for energy improvements unless determined to be appropriate through an energy audit. My question is, will the City of New York adopt the same approach as EIC in that kind of determination using the cost benefit ratio and the other preapproved measures?

Aaron: Yes, we will follow the same standards that NYSERDA has set out and I think we should plan for things to be very consistent between the EIC approach and the future New York City program. If there are issues or questions about that to the extent that there is flexibility within our state authorizing legislation, we have, as you know, from working with EIC we have a good dialogue with NYSERDA to really push back and explore if there are any issues with that procedure as it's been applied up to this date.

Susan: In so much that people on the phone have had the opportunity and if you haven't I really strongly encourage you to review the five documents that you will find under the NYSERDA C-PACE Guidelines tab and I think that we will all be really hard pressed to not agree that these guidelines are extremely progressive, really well thought out and NYSERDA has just done a tremendous job on all of this documentation and I really do think that NYC and NYS will have an extremely successful program and it is in large part owing to the great work that NYSERDA has done revising these guidelines. So if you haven't reviewed all those documents, I think, you are going to be pleasantly surprised by how fantastic these guidelines are and how relatively frictionless it will be to get these great projects done.

Cliff: Aaron, this is just one terminology question, my last question, I promise. It says the program may make loans to owners of real property within the City to finance the installation of renewable energy

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efficiency improvements and my question is, I think we've all assumed these loans will be coming or may be coming from private capital providers. Is that correct? Because the language doesn't specifically call out third party capital providers?

Aaron: The intention and the proposed design is that it will be capital providers that obviously originating those loans. Cliff, can you elaborate, I may be missing the point of the question?

Cliff: Well, I just want to make sure that I know it's been everybody's intent that there be third party capital providers that are doing this but the way I read this language was that the program will make loans to owners which made it sound like they were coming from some quasi-governmental entity or somehow coming from the program other than capital providers, does that make sense?

Aaron: Okay, I understand your point. We've been explicit about what the program design is and working with counsel and the law department and explaining the capital providers would be the ones issuing loans. I think this provides the opportunity for the administrator also to potentially participate with an originator as well, but I think that we are on the same page in terms of program design and the role of the originator here. But thank you for flagging that.

Mark: Aaron, congratulations, I know this has been a long road and a lot of sweat has gone into this. So again, congratulations on this I know how this has been a difficult process. At the same time, I do have a question related to the link between all the three bills. Is there a chance or possibility these bills could be de-linked or they are all going to be passed at once? What is your feeling on that and you can defer if you want to because I know that might be sensitive.

Aaron: Sure, so they are all going to be heard together. There is a third bill which makes a modification, a pretty minor thing, but it makes a modification to our energy grade bill that was passed last year. This isn't actually something that comes straight from our office, this is something out of council. But the three of them will be heard together next Tuesday again at 10:00am in the council chambers. I don't anticipate there will be a vote until some point next year. I don't know when, we tend to drive toward doing things around the milestone of climate week in September and April. That's anyone's guess if that will actually be the timeline. I think there is a possibility they could be de-linked if there is in fact so much controversy around the energy performance mandate that any changes can't be reconciled in a manageable timeframe but that will really be up to the council's leadership in terms of what timing they want to move forward. So, no promises, I think they will probably move towards a vote together unless it's really languishing, I don't think things will languish on the PACE side I think it will really be having to do with the accompanying building performance mandate.

Mark: Thanks

Michael Yaki/Clean Fund: Aaron, I won't be able to get there in person, where would you like us to send letters of support for the legislation?

Aaron: Sure, if you are unable to make it in person, you can either send directly to council or if you send it to me, I can print out and bring hardcopies of the letter of support to bring to the council.

Michael: When you say send to council, do you mean to the authors or to every single one?

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Aaron: Yes, I would encourage if you are going to send directly to council, to send a letter to the two co-sponsors of the bill which are the speaker, Cory Johnson, and council member, Costa Constantinides, of the Environmental Protection Committee. It is best, if you can get that by Tuesday and it can be in the record with the bill but if you can't find that information for whatever reason, literally what I can do is just I'll be there and we can print out any testimony and drop it off on your behalf and my email is in the invite to this meeting if anyone needs it.

Susan: We would be happy to be there to support you if you feel that would be helpful or to in any way support this. You can let us know by email if you would like EIC to be there on Tuesday, thank you.

Aaron: Okay, thank you, Susan.

Susan: Does the group have any further questions? Thank you so much, Aaron. Thank you for joining us at the last minute. This was very timely, I know the group really appreciates hearing from you as everyone sadly is much more interested in NYC than where I am in the rest of the State. We accept that, much less glamorous than up here where we are! (Laughter) If there are any other questions for us and also if anybody would like to reach out and see any of the documents that we are revising for the PWR program we are aiming to be extremely transparent here and once again are very happy to share edits we made to the non-bonded template or any other documents that you'd like to see let us know and keep your questions, criticisms and everything coming.

Aaron: Okay, and I'll just say thanks again to Susan and Mark for providing the forum to speak with everyone today. I look forward to hearing from folks and potentially seeing some of you next Tuesday at our hearing.

Susan: Great, thank you. Thank everybody, have a great day.