

**EIC C-PACE Advisory Committee Meeting
June 21, 2018 Minutes**

The meeting was called to order at 11:03am; Susan Morth of EIC Chaired the meeting.

Discussion:

1. C-PACE Alliance questions and EIC responses
2. NYSERDA revised C-PACE guidelines
3. Insurance wrap security for Pay-When-Received Participants
4. C-PACE update in NYC by Aaron Ordower, NYC Mayor's Office

Susan Morth: *Good morning and welcome to the EIC C-PACE Advisory Committee meeting. We have an itinerary with about four items on it. In terms of the things we will be discussing today, we were fortunate enough to get very detailed questions from Cliff Kellogg who represents the C-PACE Alliance, and we did have the opportunity to respond to some of those questions which may be of interest to the group. The second item on the agenda is that NYSERDA has just released their revised C-PACE guidelines, those are posted on their website, and probably worth reading those guidelines and then perhaps the next time have a discussion to answer any questions. Thirdly, we want to talk about the topic of an insurance wrap providing security for "Pay when received" participants given some concern about not being able to compel municipalities to foreclose. Last on the agenda today, Aaron Ordower, from the Mayor's office in NYC will give an update on what is happening as it relates to a C-PACE program in NYC. To kick it off, Cliff, would you like to talk about the questions you had for us, and our response and if there are any further questions from the group on these topics and perhaps we could go through one by one the issues and we spoke about ten days ago.*

Cliff Kellogg: *Most of these issues arose around the familiar topics of what would happen in the event a municipality did not honor its contractual commitment to foreclose and the outcome of that was uncertain even if a judge upheld the validity of the contract the municipality had made. The municipality might continue to delay for various reasons one could imagine. There is some uncertainty around that question. Susan, I don't have the document directly in front of me so you might need to guide me through the rest of the questions.*

Susan Morth: *One of the opportunities we had was to meet with a municipal insurance company. The topic was could there be an insurance wrap that capital providers can purchase to protect against the sort of pinhole risk should a municipality not forward the PACE payment. That is being explored and it might be possible that an insurance company might be willing to underwrite each municipality and look at the risk they may be insuring in places like NYC, Suffolk County, etc. they did not forward payment or for whatever reason did not proceed with their regular foreclosure process. We are looking into ways to offer capital providers security against this risk be it small but very real to people that want to participate in the PACE market here. So that is something we looked into last week and I don't know if anyone on the line has any other intelligence on that topic, I'm sure we would like to hear it.*

Laura Franke/PFM: *I want to acknowledge we are continuing to have conversations with additional insurers but they haven't happened yet but we will continue to report once we have those conversations.*

Susan Morth: *That's great, that's very helpful, thank you Laura.*

Ethan Elser/PACE Equity: *There are other states where there is a similar structure like Wisconsin being one and I'm wondering if that wrap cost structure and requirement of that if we don't necessarily need that to get comfortable since there already is a concern with the large adder to the rates.*

Susan Morth: *I didn't make this clear, I apologize. This is a wholly optional wrap. There may be people interested in but not a requirement. We at EIC are trying to provide solutions if capital providers feel they want additional security but in no way required.*

Ethan Elser: *Thanks for the clarification.*

Susan Morth: *In just moving on and thanking Cliff for his work, we did talk about segregation of C-PACE proceeds from a municipality other revenue if a municipality is in financial difficulty and was in bankruptcy what classification does a C-PACE assessment fall. Is it a general obligation, what is the likelihood to shield the municipalities from other creditors? From EIC's legal counsel, it is unclear, but in talking to the municipality insurance company we talked to, it does sound like in Pay-When-Received PACE, given it's a bond and not something that is an obligation of the municipality it does make sense that this would not be considered a general obligation. Clearly, we are not lawyers and not representing this as a legal opinion but just wanted to share the information as we received it would be treated that this is not considered a general obligation in the Pay-When-Received program.*

Our Pay-When-Received addendum and as a reiteration we will include a five day remittance period, meaning the municipality would agree to after they have received the PACE assessment from the property owner, they would remit that through EIC's trustee within five days to keep this timely.

Cliff Kellogg: *At the time of our last phone call, EIC had discussed the addendum with three municipalities at the time, what is the current status of socializing and trying to adopt this addendum?*

Susan Morth: *We have not rolled it forward to our other municipalities yet, our strategy is when we have a Pay-When-Received project requiring this addendum to be signed, we will put in front of that particular municipality. We are trying to be cognizant of the fact we may get feedback that leads us to make incremental adjustments. We are open to feedback from this group which is part of the reason we called for this advisory committee, again seeking your advice. If capital providers reviewed this addendum we will ask again for feedback before we ask a municipality to sign this so not to be stuck with something no one wants. It can be customizable by municipality.*

Cliff Kellogg: *Thanks for the clarification, it makes good sense.*

Susan Morth: *We reconfirmed PACE payments are pari passu with other tax charges.*

Tax lien securitization sales, NYC does have that program. EIC does not know in detail about every other municipality in the state however we think the ability to pursue a tax lien securitization does exist in some municipalities but none seem to have implemented that particular program and that seems wholly outside the purview of what EIC would intend to do, encouraging a municipality to somehow change their tax process.

Mark Thielking: *Just to elaborate, here in NY all tax charges and assessments are grouped onto one bill, so when a tax lien securitization or tax lien sales happen they are actually selling the lien which involves all the lines and all the charges and all the assessments on the bill and not just the individual PACE charges or water assessment.*

Susan Morth: *Next question raised was if a property sold in foreclosure, are those proceeds applied to past due C-PACE charges? The answer is yes. Effectively the way this works is each year's unpaid taxes which include the C-PACE assessment becomes a separate lien so the answer is in line with what folks had hoped for, that past due charges are paid along with current year taxes on an annual basis. Another thing I'm sure you are all aware of, in 90-95% of cases the senior mortgage holder does come in to redeem these liens to avoid foreclosure so the risks concerned are small but certainly important.*

Lastly, there were some issues surrounding the adder on the interest rate and the 25 basis points does seem to be very high and we understand the concerns of making the program a little more expensive however that amount as this time is not negotiable. We hope that in time as the program firms up and matures that we can bring that rate down. Right now the 25 basis points is not negotiable absent a very large deal of \$20M in size or something along those lines.

Last agenda item, is the ability to obtain title insurance on foreclosed properties, this depends on the title insurance company but three years seems to be the minimum as to the length of time you are not going to get insurance an unqualified title policy. Our underwriter looked into this and it does vary depending on the title company involved.

Cliff Kellogg: *Thank you for addressing those questions so quickly that was a really helpful phone call with you and Mark.*

Susan Morth: *NYSERDA did release their revised C-PACE guidelines and they are posted on their website. They are about 15 pages and address a few major topics. Mark Thielking will hit the highlights then we will give you time to review on your own, and then have a conversation or bring one of the NYSERDA folks knowledgeable on this topic to our next call if it's of interest to the committee.*

Mark Thielking: *C-PACE guidelines, version 1.0 released in fall 2017 have been revised. Article 5L which is our PACE statute requires NYSERDA to release these guidelines and to manage how PACE is implemented in NYS as it relates to the technical standards as well as any other requirements like energy audit. It changes from V1 to V2 release stems from making PACE more applicable and more assessable to NYS residents. So this should be favorably received by all of you. Some highlights are NYSERA expanded the list of entities that will qualify and certify auditors that must provide an evaluation of the measures that are being installed in the building, So that broader list of entities that are certifying such as if your auditors regular certified PE that would qualify has now again broadened the list of entities of auditors that can now audit the measures that are being considered. In addition, there is now a more defined list of prequalified measures. For those entities that like to put in measures that are specific off of a list so the requirements related to Savings to Investment ratio are avoided because they are already considered cost effective that list has been defined. In addition, for those of you involved in gut renovations those standards are now in the C-PACE guidelines so that is a big step forward on that front. Also NYSERDA is now qualifying that both ancillary measures as well as resiliency measures can be included into a C-PACE financing and added that energy audits could standalone as a PACE qualifying measure. So if you do some predevelopment work related to an energy audit and the construction stops we could actually finance that project of that energy audit as a standalone measure. Obviously you should read it, there is some really good stuff in there. There were just the highlights. Again, overall we feel this is a huge step forward to making PACE more accessible and acceptable to NYS residents.*

Cliff Kellogg: *Could you repeat what you said about the items included in the calculation of savings to investment ratio and how would that work on a resiliency project?*

Mark Thielking: *Why don't we save that for an offline conversation, only because it gets really weedy very quickly.*

Susan Morth: *Yeah, we are going to say given that these were just released and that's a fairly detailed but great question we will take it offline with you Cliff.*

Aaron Ordower: *I would be happy to chime in to that discussion about the applicability with the savings to investment ratio requirements for resiliency as well.*

Susan Morth: *Do you have anything you want to add now, Aaron, or do you want to take it offline?*

Aaron Ordower: *I glad it was reflected, I think it was one of the things we think of as a priority here in NYC and it's been a challenge to finance building improvements for resiliency so we think it's a good model to follow but we haven't had a chance to dig into exactly what the language state yet with that respect so if there is an opportunity for us to pull in the large resiliency team in my office to do some brainstorming to think about ways to support NYSEERDA that both advances this communities objectives as well as bring some technical resiliency back around to the fore, I think we can definitely organize and hopefully be helpful.*

Susan Morth: *Thank you, that's great. You are actually bringing us, unless there are further questions on these guidelines, which we all need to read carefully, we were hoping to get an update from you on what NYC is thinking of PACE.*

Aaron Ordower: *Thanks, Susan again, for including us and giving us the opportunity to update this group. I have been in touch with some of you and I would like to update you that we are still in the Mayor's office and the Mayor, himself, is committed to getting PACE legislation introduced soon in NYC. We had some hopes that would have happened already, you've heard me say that before and I'm sorry to sound like a broken record to the extent that PACE legislation is just around the corner and I do think that is the case. We have strong council support and the Chairman of the City Council Environmental Protection Committee, Costa Constantinides from Queens, has jurisdiction over PACE but as I have explained to some of you who have expressed interest, there is also some large environmental legislation this is in the works in NYC having to do with the building energy performance mandate sort of the first of its kind legislation that would require minimum building performance standards for all buildings above a certain size (24:50) threshold. The opportunity is if both legislations introduced and passed is that we have not only a commercial PACE program here in NYC but we also have a mandate that many building have to do capital improvements to reach an energy standard. Unfortunately, what this means to the timing of the program is that council wants to introduce a package of bills which include both PACE and the energy performance mandate together. Because of the opportunity of providing not only a regulatory requirement for buildings but also a financial solution. So in my office we would like to see a quicker introduction of the PACE bill and see that move ahead of the potential performance mandate but its most likely going to move in lockstep as two separate bills. I think in terms of timing for that bill introduction I wouldn't be on anything these timelines have changed over the months but most likely it won't be something that happens during the summer but once council returns to more regular sessions in August or September will be the next likely milestone. Environmental legislation tends to get introduced around Earth Day in April or Climate Week in September but I haven't heard from anyone that that is specifically the timeline they are angling towards like a September introduction for the bills. That said, I am disappointed we don't already have this introduction, but we're working hard with council to get it we are working in the office to do as much as we can to get standards ready to go for this PACE program. Many of you touched base with*

members of my team that we are looking to putting together a marketing strategy for the program so we have that ready to go this spring. This summer we are working with NYCEEC and Peter Irwin as well as a fellow in our office Jack Akinlosotu, to put together a draft of the PACE program guidelines for NYC building on what Energize has done, what are NYSERDA standards and best practices we are seeing from across the State. We may draw upon your expertise over the summer to get advice and feedback and appreciate your generosity in helping us to shape those standards. As soon as we have the legislation we cannot waste any time in having to do administrative or planning legwork. That's the update and I'm sorry I can't report we already have the bill introduced in council but we are optimistic that when it comes we can move quickly and have wide support to move forward.

I can take a couple of questions if we have the time?

Cliff Kellogg: *Thanks again for the efforts of your office of course what every capital providers is interested in knowing is how complex the approval process may be and secondly, what will the fees be. Do you have any information on either of those or would you be able to preview at some time what those will be before they are finalized?*

Aaron Ordower: *Yeah absolutely and Cliff, thank you to C-PACE Alliance and other participants that have provided feedback already and recommendations we are taking those really seriously. I think on both questions, I don't want to promise it will be by August but I'd like to re-engage with this group with draft recommendations and vet them on both cases. I don't have a final answer yet but we are looking closely at both questions and taking the feedback we received into consideration.*

Cliff Kellogg: *Thank you. We certainly have seen around the country that the best outcomes come when this is some consultation before the rules are finalized. Whatever you can do on that score surely do appreciate it.*

Aaron Ordower: *Of course.*

Susan Morth: *Is there anything further as to questions for EIC as how it relates to how we could help you in discussing your concerns with our legal team as you know we are trying to pursue an insurance wrap to see if that is an option for capital providers that are concerned with any kind of residual or pinhole risk. We would be happy to in there is interest to let us know of the course of the next several weeks. We have a fantastic program managers helping us at NYSERDA who are obviously experts on the new C-PACE guidelines and I know they would be happy to answer your questions directly should the guidelines be something of interest to the committee for our next meeting just do let us know. We will cover any topics that you wish us to.*

With no further questions, the meeting ended at 11:34am.