

**EIC C-PACE Advisory Committee Meeting  
May 17, 2018 Minutes**

The meeting was called to order at 11am and Susan Morth, EIC Managing Director of Business Development, acted as Chair of the meeting.

**Attendees:**

Alini, Eric	Morth, Susan
Elser, Ethan	Ordower, Aaron
Friedman, David	Pierroz, Alain
Hale, Greg	Samai, Amanda
Kellogg, Clifton	Saunders, Greg
Lee, Fred	Schaefer, David
Lewis, Brandon	Smith, Josh
Moore, Joanna	Thielking, Mark
Sherman, Genevieve	

The purpose of today's meeting is to discuss concerns and questions regarding EIC's program management of NYS PACE program to improve C-PACE opportunity in New York.

PACE make-whole product makes whole if there is a tax delinquency. There will now be a capital provider for A rated and above municipalities and the addition of a capital provider for below A and unrated municipalities added as well as amendments to Article 5L NYS PACE law removing the 10% cap and allowing the charge to be placed on the property during construction, enabling construction financing.

**Q. Ethan Elser:** *Does the Governor's white paper announcement effect EIC's program?*

**A. Susan Morth & Mark Thielking:** *No, it does not. The white paper is the first acknowledgment that Residential PACE could be a significant tool to help achieve the state's energy efficiency goals of carbon emissions. Currently this has no effect on EIC because NYS must still develop technical requirements for Residential PACE as well as a consumer protections element. ENY has made modifications to the program that will make it easy to allow additional products such as Residential PACE.*

**Q. Cliff Kellogg:** *Regarding comments from five capital providers on the C-PACE alliance having two questions: 1) How to gain confidence regarding the time on when a municipality might foreclose and 2) assurance that special revenues are segregated from other revenues if a municipality should go bankrupt, the assessment revenue will be treated separately.*

**A. Susan Morth:** *We can contractually bind the municipality to enforce this addendum but it is not necessarily enforceable legally. EIC has included strong language in the addendum and it has been accepted so far.*

**Q. Josh Smith:** *Regarding the contractual promises being legally enforceable as an open question, has EIC given thought to obtaining an expert in municipality financial law to give a more definitive interpretation.*

**A. Mark Thielking:** *Squire Patton & Boggs EIC feels is an expert in the field. If there are suggestions on another firm that may be a better fit, suggestions are encouraged and welcomed.*

**Q. Josh Smith:** *It wasn't my suggestion that Squires wasn't the right firm to get this done, it is my understanding that to date Squires hasn't been able to reach a firm conclusion and perhaps the goal may be for them to take a position and give an idea as to what might happen.*

**A. Susan Morth:** *An idea for the next committee meeting will be to have such legal questions submitted prior to the meeting so that we may be able to put them before Squires or a legal expert to have an answer at the meeting.*

**Q. Genevieve Sherman:** *Can you provide an update on whether the local ordinances are actively being amended in relation to amendments in NYS's laws or will those ordinances only take place once there is a better consensus with the other option.*

**A. Mark Thielking:** *There is good news, since the Article 5L amendments was passed we have been working with all 43 members to have those laws amended and all but three have yet to set their local law meeting.*

**Q. Genevieve Sherman:** *So, it sounds like your member municipalities and counties are close to introducing amendment language to their ordinances but no one has actually passed an amended ordinance yet?*

**A. Mark Thielking:** *No, about 60% have finished the local law amendment process and the amendments to the municipal agreement and approximately 37% are in process and 3% have yet to start. Susan Morth:* *We are done and ready to go in some of the large counties which are ready today to have projects funded.*

**Q. Genevieve Sherman:** *Would you be able to circulate the ordinance amendment language and is it 100% across the board?*

**A. Mark Thielking:** *The new local law amendments and municipal agreement is on our website on the membership page.*

**Q. Cliff Kellogg:** *Is there any possibility under NY law that a municipality can transfer its right to foreclose to a private party?*

**A. Susan Morth:** *I don't think so, I think that wouldn't stand up legally. Mark Thielking:* *I've learned it's called the Police Powers of tax collection and remittance enforcement are the municipalities alone and yet in NYC there is a tax lien securitization program. The actual right to foreclose has been held at the City and township level for reasons of abuse when the ability was transferrable. There are processes to sell the asset to recoup funds and the other aspect to this is the PACE tax charge is grouped within the tax bill of the property so it is collected at the same time as other taxes, thus not separable from the other group of taxes, which in a way is good because most of the money is not generally the PACE charge, it is everything else, but if you are*

*looking to enforce that specific charge there is no separate lien/separate enforcement action possible because it is grouped with the property tax bill. The only other option is to create a separate billing system where we would be billing a finance repayment bill which could be added to the tax bill after the fact but the administrative cost were deemed to be too great. Other public benefit formats are doing this but if unpaid it is added back to the tax bill with other charges and the enforcement process is the same as before so there isn't a great benefit.*

**Q. David Schaffer:** *Have you explored the possibility of contractually obligating the municipality to sell the tax lien to a tax certificate program like NYC and would that be enforceable.*

**A. Susan Morth:** *I don't think we have. Interesting and will add to our "homework".*

**Q. Genevieve for Ethan Elser:** *What is EIC's conversations with municipalities and vis a vis RPACE and whether there is an expectation that some municipalities will not want to do both but only do one and how are you navigating those conversations?*

**A. Mark Thielking:** *There are some municipalities passing the law for the future RPACE and some municipalities won't touch it in the current make whole format. Since the RPACE market in the rest of the country is a pay when received product and given our members are hesitant around the backstop in RPACE and the happy medium will be the municipalities will get RPACE that want it and the hesitant municipalities won't need the backstop and it will work well. There is still a lot of work to be done on the State level and a big piece is the consumer protection.*

**Q. Ethan Elser:** *What do you expect fees to be for the pay when received program; is the current thinking still 25bp, can you just say what it is?*

**A. Susan Morth:** *We are still looking at 1.5% fee up front with a cap of about \$75,000, then the interest rate surcharge will be 25 basis points.*

**Q. Genevieve Sherman:** *Having an interest adder is an incredibly unpopular in the world of commercial PACE and there is no program that I've participated in where the building owners don't raise hell about that to the extent that most of you are familiar with PACE Financial Servicing which is a subsidiary of ours that operates in the state of Maryland and we had an equivalent to an adder to cover our servicing costs which we are actually amending our servicing fees this year to a flat fee with a floor and ceiling that's an actual percentage of the payment amount and not a basis point being paid on the outstanding principle.*

**A. Susan Morth:** *That's helpful. If you are able, send us language about your changes so that we can review that.*

**Q. Greg Saunders:** *Some additional perspective on that, if you look at that fee structure as an all in present value with 25 basis points per annum that amounts to about 200 basis points so the capital providers look at this as a package and this amounts to about 3.5% of the financing amount of the project cost overall and so it does present some headwinds to achieving scale so the capital providers need to put in some profit margins as well into their figures so I look*

*forward to supporting movements toward simplicity and over time more competitive cost structure.*

**A. Mark Thielking:** *Recognizing those issues, on our end we are being asked to provide a structure that is self-sustaining and part of that investment that NYS has made in making EIC accessible to lots of property owners but also capital providers like yourselves which means we have to be charging fees that are sustainable. Part of the question should be answered by how much volume we will be seeing and if you have views as to how much volume and capacity we will be seeing and thus how much fees we would be earning off that to sustain EIC's operations over time that would be helpful. Because we are being pushed to be a self-sustaining entity without any further involvement from NYS which has made a substantial investment and a commitment make us viable. Please send in your estimates of when you will see your volume and how much we can charge.*

**Susan Morth:** *We've had internal arguments over the 25 basis point adder and what does that mean, it means one thing to a \$2M project and what could that possibly mean to a \$30M project. Clearly, this is not the answer but we had to start somewhere, we appreciate that is a lot of money, and we certainly don't need that type of income to sustain ourselves, not looking to be profitable, just looking to be self-sustaining. It is a work in progress and we want NYS to benefit from the maximum number of projects to achieve its carbon reduction goal.*

**Eric Alini:** *Let me add, as capital advisors need a viable program that is able to spend money where we need to do marketing to do growth to get involved and EIC needs to scale to make decisions on budgets and where you are going and over time as volumes move and grow we will be able to argue for lower fees but again I would like to see a viable program with good servicing to your side with good engagement with the property owners and or municipalities as needed all businesses have startup capital and maybe we think of it as startup capital for now and address as we go forward. I would rather have a good program than one that's missing things because you can't find the capital to get things done. You need to balance those and I think we are all happy to move forward. If you can't do what you're supposed to do than this is just a big waste of time.*

**Susan Morth:** *Thank you so much Eric and I think you have the unusual experience of having been on our side and we do appreciate you are a successful program manager and we are very happy to have the opportunity to learn from all of you.*

**???:** *Is Aaron Ordower is on the phone? I was wondering if he would be able to say anything that was happening in NYC.*

**Susan Morth:** *Aaron and Fred are listening to us and are unfortunately stuck in a muted mode and cannot join in. We are going to switch back to Go To Meeting the next time so everyone can be unmuted we were concerned there would be too many of us to do that.*

*With no further questions, I just wanted to say that I am hoping we can get back together. If you can send us your questions for our bond counsel that will be our topic for the next regularly scheduled meeting. If people can individually respond to the addendum, respond to our RFQ in a minimal fashion that would be terrific. I'm thinking one month from now will be our next meeting unless a meeting is needed in two weeks.*