

PACE Rulemaking Discussion Meeting Summary
Hawthorne Bank Community Room
Jefferson City, MO
November 9, 2017

Attendees: 6 Stakeholders, 2 EIERA Staff, 4 DED-DE Staff

1. Welcome and Introductions:

Participants were welcomed, everyone introduced themselves and an overview of the agenda was given.

2. Red Tape Reduction Initiative:

Although not related to PACE, EIERA staff introduced Governor Greitens' Red Tape Reduction efforts and the EIERA rules. Comments were encouraged and could be made at this meeting, through the EIERA or DNR websites, on comment cards available on the registration table, e-mail or at the next EIERA Board Meeting. Comments will be taken through December 15. No comments were offered.

An introduction to the EIERA was given, including a summary of its purpose and programs.

3. Introduction to PACE:

The participants agreed that they were familiar with PACE and no introduction was needed.

4. Statutory Authority to Enact PACE Rules:

The EIERA rulemaking authority granted by statute is limited to the administration of the Property Assessed Clean energy Fund (which has not been created and is not under consideration) and to clarify the definitions of energy efficiency improvement and renewable energy improvement. While there could be other concerns, the EIERA is limited to these areas.

The statute currently has definitions of both energy efficiency and renewable energy improvements including a non-exclusive list of items which meet the definition.

5. Rulemaking Process:

The EIERA Rulemaking Policy (available on the EIERA website) requires EIERA staff to gather information and input from stakeholders before presenting potential rules to the EIERA Board. This rule development process is designed to help determine whether a rule is needed, why it is needed and to collect data to support the need. The intent is to

be data-driven, transparent and statutorily supported. That is the stage we are currently in. If it appears that a rule may be needed, EIERA staff will draft language and bring that language back to stakeholders for further discussion. The EIERA Board will be updated during the process and can provide further direction to the EIERA staff. After language is reviewed and stakeholders have provided feedback, staff will finalize a rulemaking package to be brought before the Board. This rulemaking package will include, among other items, draft language, a fiscal note, finding of necessity and a summary of stakeholder involvement. The Board can then decide to approve, reject or alter the rulemaking package, direct staff to rewrite the rule or to go back to stakeholders for additional input.

If the Board approves the rulemaking, it enters the statutorily prescribed process. A proposed rulemaking package is filed with the Secretary of State and Joint Committee on Administrative Rules (JCAR) and is published in the Missouri Register. After a public comment period which includes at least one hearing, comments are reviewed and responses are prepared for Board consideration. If needed, the rule is revised and the Board decides whether to approve the Final Rule. The rule text and other materials are then filed with JCAR and the Secretary of State within set time frames. Absent legislative action, the rule will be published in the Missouri Register and becomes effective 30 days later.

6. PACE Rulemaking Survey:

The Rulemaking Survey was developed to solicit the type of information needed to determine whether a rule was needed, why it was needed and to gather data and other information needed to make a finding of necessity. It was provided to numerous stakeholders. Stakeholders were identified in a number of ways including those expressing interest in the process at meetings and as identified by EIERA, DE staff and other stakeholders. Participants were encouraged to share information about the process and to provide other names for inclusion to the list. The Survey, along with general PACE information, the potential rulemaking process and meeting information was posted on the EIERA website.

Three Survey Responses were initially received, and summaries of their suggestions/comments were sent to stakeholders. Two additional Responses have also been received. All five Responses have been posted to the EIERA website. Identifying information was not included when Responses were posted to help focus stakeholders on the content of each response rather than the entity responding.

The summary document listed suggestions from the first three Responses along with the reasons, benefits or comments for each. Multiple Responses may be reflected under each suggestion.

During the meeting, EIERA staff read the summary of each comment/suggestion and the reasons and benefits for each. Responses were received after the summary document was prepared. Information from those and additional comments from the previous meeting were also read. EIERA staff let participants know which information was not on the original summary sheet.

Meeting participants were asked to provide any additional comments or information they would like the EIERA to know on each. Additionally, if a participant did not feel that the summary accurately reflected the Response, they were asked to clarify the meaning. Participants were also encouraged to write their comments out on the provided Comment Summary Form to ensure that their comments were accurately reflected in the record.

Comment #1: Clarify that water efficiency is included within the definition of energy efficiency improvements.

Reasons/Benefits: Water efficiency saves energy at the property owner's location; decreased water usage will result in less energy used in conveyance and treatment by the water system (both water and wastewater systems; and would allow low flow shower heads, fire suppression systems or automatic systems for commercial properties.

EIERA: How do fire suppression systems impact energy efficiency?

Participant: Newer systems are more efficient and there may be some savings. They are expensive, but savings are on the back end—insurance rates and loss of property avoidance. More codes are requiring them. Trying to fit them into PACE so safety measures are included without stopping development, but may not be there yet.

Participant: Jefferson City has added them to its multifamily housing code. Habitat installed a system that cost \$15,000

Comment #2: Further specify eligible improvements/clarify the base list of eligible improvements and/or expand statutory list.

Reasons/Benefits: Increase certainty and consistency; decrease administrative costs and cost of capital; increasing access to efficiency improvements will increase energy savings; it would be helpful to develop an approved list of improvements, but Clean Energy Development Boards should have the flexibility to evaluate and approve improvement measures determined to meet the statutory definitions.

Reasons/Benefits not in original summary: Strong definitions are needed to ensure that the public policy of energy efficiency and clean energy promotion is directly supported; residential borrowers may be less sophisticated than commercial, so consumer protections are needed given the consequence to pay a tax bill; and tax bills are not debt collection tools-shouldn't be used for all home improvements.

Participant: These lies are primary over other liens. Payments are once a year and are large which may be difficult, in particular, for older property owners. There is no oversight/districts are self-regulated which is the Collectors' primary concern. Consistency between boards should be required. Commercial PACE is fine. It is difficult to sell someone's house after three years of not paying taxes; doing so for PACE is distasteful.

Comment #3: Do not enact prescriptive rules or extensive listing of project components or their savings.

Reasons/Benefits: Projects are different based on the property owner, utility provider and location of the property; and guidance could be more beneficial and timely than rules.

Participant: PACE Boards are political subdivisions and given the authority and responsibility to follow the statute and set up rules for their own program which is done by ordinance. Limiting their responsibility for and right to create their own programs isn't appropriate. Further regulations and definitions aren't needed.

Comment #4: A designation for commercial energy efficiency professionals should be defined and recognized by the state in the same manner as the home energy auditor.

Reasons/Benefits: Provides PACE Boards certainty in determining whether improvements reduce energy consumption; uncertainty increases cost of capital and of doing business; absent guidance, some districts are using an energy auditor and an engineer resulting in higher costs without necessarily benefiting the program outcome.

Participant: DE now certifies commercial and home energy auditors since the PACE statute allows districts to require an audit for commercial PACE. Home energy auditors have had a certification program since 2008. Only one commercial auditor has been certified to date.

Participant: It appears that this rule isn't needed since DE has taken care of it.

Participant: Why has it been so long since EIERA has promulgated rules?

EIERA: There has been no need to do so relating to bond issuance. The early drafts of PACE legislation had EIERA in many places, but they were duplicative of authority granted in its authorizing statutes. Those provisions were removed, but the rulemaking portion remained.

Comment #5: Provide guidance setting forth reasonable and generally accepted methodologies to be used by clean energy development boards in making their findings under §67.2815.1.

Reasons/Benefits: Would reduce uncertainty related to eligible improvements; reduces cost of capital and provides greater access to improvements not specifically in statute; provides guidance to volunteer boards.

No comments were offered.

Comment #6 (not in original summary): Clarification is not needed.

Reasons/Benefits: Current definitions provide sufficient clarity and are more explicit than other Missouri statutory definitions of energy efficiency and renewable energy; they provide clear examples to follow when developing program guidelines and approving projects which has allowed the development of extensive product lists and lead to significant private investment; they allow property owners to access new products/technologies as they come to market; and legislators were intentional in their definitions.

No comments were offered.

EIERA staff asked if there were any other thoughts or comments on the Response items.

Participant: Boards make their own rules without any control. There should be consistency between boards.

Participant: Districts work with their member communities to make decisions.

Participant: I was on a district when the county joined (the county has since withdrawn due to uncertainty). It was a rubber stamp decision. Collectors are not intended to be debt collectors. There are differences between districts. The State needs to give standards and ensure consistency.

Participant: PACE Boards are public-private partnerships. Statute puts a box around what can be financed and how it is collected. The differences between districts allow the consumer to choose who/what they want.

7. Other Participant Comments or Suggestions:

Participant: Does EIERA have enforcement power?

EIERA: Is an open question. It could be implied, but is not explicit in the statute.

Participant: Missouri's statute is different than other states. There can be differences between districts, but there is a requirement that the economic benefit must be greater than the cost of financing. This is not in all other PACE statutes and is a significant consumer protection. Districts must make that finding in every financing.

8. Next Steps:

This is early in the information gathering phase to determine whether clarifications to the definitions are needed. Surveys will be accepted through November 30. There will be additional opportunity to comment after that date; however exact timeframes and formats aren't known at this time. EIERA staff may also reach out to gather additional information or ask questions of stakeholders.

This is the second meeting and two more will be held, one in St. Louis and another in Springfield. Participants are welcome to attend as many as they wish, but summaries of each will be posted so everyone knows what was discussed at each.

If it looks like rules may be needed, there will be another round of stakeholder meetings to discuss the draft language. There will also be additional opportunity for public comment should the EIERA Board find that a rulemaking is necessary and instruct staff to begin the statutory rulemaking process by filing a Proposed Rule with the Secretary of State.

Participants were encouraged to submit Comment Summary Forms, provide additional Survey Responses, provide other information or ask questions through the EIERA website or e-mail.