

PACE Rulemaking Discussion Meeting Summary
DNR Kansas City Regional Office
November 6, 2017

Attendees: 5 stakeholders, 2 EIERA Staff, 1 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.

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. 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 more than 250 potential 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.

During the week prior to this meeting, three Survey Responses were received, summarized and sent to stakeholders. An additional Response was received and it, along with the other three Responses (with respondent identifying information removed) were posted to the EIERA website. Identifying information was not included to help focus stakeholders on the content of each response rather than the entity responding.

The summary document listed suggestions from the 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. A response was received after the summary document was prepared. Information from that Response was also read and EIERA staff let participants know that it was information 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 also 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.

Participant: Is this for residential or commercial?

EIERA: Potentially both

Participant: This is about the definitions. There are other requirements in the statutes.

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.

Participant: Consistency is important to district and between districts. Consistency will reduce questions about validity and establish industry norms.

Participant: There are concerns on residential PACE violating standards (i.e. Loan to value ratio exceeded allowed amounts) in assessments seen to date. PACE districts are self-regulating. Need rule enforcement, complaint line for consumer protection. Collectors understand that not all of their concerns can be addressed under the rulemaking; however, they want their concerns heard. Tax collection needs the highest level of protection. Collectors don't do debt collection generally and everything should hit on the need/design of tax collection. Showerheads should not be included, big things are OK, but not every little item. Keep requirements very specific to make sure that it is done right. Tax bill requirements are very strict. If you miss a payment there is a big impact. This needs someone other than the tax collector looking at it to see if it meets the requirements.

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: Does this question refer to residential or commercial?

Participant: Should be separate rules for individuals and businesses. Businesses are typically more sophisticated and don't risk losing their homes.

Participant: Not sure that you could bifurcate because it isn't in the statute. Maybe EI ERA can't, but it could be done elsewhere.

Participant: Commercial PACE is not collected through tax bills

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: Does Missouri have certified commercial auditor program?

Energy: Yes, it was added to meet PACE financing requirements.

Participant: Do auditors look at all projects?

Participant: No.

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.

EIERA staff asked if there were any other thoughts or comments on the Response items. None were offered.

7. Other Participant Comments or Suggestions:

EIERA asked if there were any other comments or suggestions not on the Response items. None were offered.

Comment Summary Forms were completed by some participants after the meeting. Comments made include:

Comment Summary #1: In response to the statement in favor of a bifurcated regulation for commercial versus residential; that this is likely not doable since there is a unitary statute.

Comment Summary #2: In response to the assertion that residential PACE has no accountability to meeting or exceeding the public purpose. These assessments are part of the revenue bond process which generally includes bound counsel opinion to the validity. Also, exacting additional oversight and accountability is a statutory matter and may be better dealt with by the Missouri General Assembly.

Comment Summary #3: Defining “energy efficiency” does not negate any other statutory requirement for the improvement.

Comment Summary #4: A defined list of improvements would help with consistency and stability.

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 first of four meetings. Participants are welcome to attend as many as they wish, but EIERA staff will post summaries of each so that everyone is aware of what was discussed at each. The same format will be used at each discussion meeting.

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.