

PACE Rulemaking Discussion Meeting Summary
DNR Southwest Regional Office
Springfield, MO
November 13, 2017

Attendees: 3 Stakeholders, 1 EIERA Board Member, 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. 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. 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.

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. A summary of the other two Responses, their reasons and benefits as well as additional comments from other meetings were read aloud. EIERA staff let participants know that 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.

Reasons/Benefits not in original summary: Fire suppression standards are being increased in some codes. Trying to find a way to connect that to PACE so development isn't stopped and safety measures are included.

Participant: Doubt that consumer would see savings from low flow showerheads.

Participant: We aren't California. With our rates, interest would eat all of the savings.

Participant: What would be done to make the definition include water?

Response: A regulation listing it as eligible and the board would need to make a finding of savings.

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; tax bills are not debt collection tools for every home improvement; taxes should have priority over local liens; many improvements are on older homes with older owners, they could have trouble making large, once a year payments; selling a home is difficult, it is distasteful to do so over PACE/energy efficiency.

Participant: What is your definition of energy efficiency?

EIERA: at this point we are just gathering information from stakeholders-in the fact finding stage.

Participant: What is the value of not including water? Why not be as inclusive as possible?

Participant: If the savings over the life of the faucet won't pay for the cost of the change out, it is difficult to quantify the amount of savings.

Participant: There needs to be an audit to determine and verify savings.

Participant: If savings don't justify the cost, who suffers? The owner may be willing to take the risk.

Participant: Under the statute, savings must be shown or the project doesn't happen. The board must make a finding

Participant: Residential owners aren't commercial users, they are less sophisticated and don't understand the consequences of the program.

Participant: There are other costs to the utility/supplier such as plant expansion which might be avoided. Should look at them too. Water is becoming more scarce in SW MO.

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

Reasons/Benefits not in original summary: Districts are political subdivisions, formed by ordinance and have the responsibility to set guidelines and parameters-rules limiting their ability to do so aren't necessary or appropriate; and the statute draws a box around what is financed and how collected, the difference between districts and their guidelines allow property owners to choose what and who they work with.

Participant: Political subdivisions should be removed so it wouldn't show up on the tax bill. Homeowners don't understand what they are signing up for.

Participant: The Boards are political subdivisions, so their assessments can be collected; however, they aren't like other political subdivisions. This is more like collecting for a bank. With late fees and principals, homeowners can get behind quickly. If assessments are late, they will be paying on the loan and the tax bill which has an 18% interest rate and 9% penalty. This is a quick way for homeowners to get buried.

Participant: but that is the way it is for anything a Collector collects.

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.

Reasons/Benefits not in original summary: The Division of Energy has taken care of certifying commercial energy auditors, so this suggestion isn't needed.

Participant: Commercial PACE requires audits, but not residential. Either an auditor or engineer should be used, whichever is best for the need.

Participant: does Missouri have commercial audit certification?

DE: Yes. Certification was created to meet the PACE requirements.

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; legislators were intentional in their definitions; and Missouri statutes are different than other states', it contains the requirement for a finding that the economic benefit of the improvement must be greater than the cost of financing in every project, this isn't in all other statutes and is a significant consumer protection.

Participant: there are many unanswered questions-who is the economic benefit for, who benefits? The statute is too general. Does that put consumers at risk?

Participant: Are findings by the Board made available to the public?

Participant: Yes, they are

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.

Participant: Unless audits are required on residential, there is a hole in the program.

Participant: What are examples of what PACE has funded?

Participant: For one district, residential improvements have been: HVAC 40%, windows/doors 30%, solar 15%. Commercial has customized projects, so there are no specific trends.

Participant: Does it include new construction?

Participant: Statute allows, but only doing renovations now.

Participant: With water, City Utilities would want low flow toilets. They do audits because it relates to them directly.

Participant: Residents can get toilet rebates. Should only include benefit to the consumer. There are other rebates out there, including for insulation. Can you get rebates and do PACE too?

Participant: Yes, the benefit goes to the homeowner.

Participant: Can we send in all comments, or only those related to the statutory authority?

EIERA: Please send in anything you would like.

A Comment Summary Form was completed by one participant after the meeting. Comments made include: Economic benefit to the consumer must be assessed. Residential projects must have energy audits performed to show that the savings will pay for the upgrades as promised by the program. As it stands now items could be added that will not save money and will actually cost the consumer higher prices.

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.

One more meeting will be held in St. Louis. Anyone is welcome to attend. Meeting summaries will be posted on the website.

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.