Garden State C-PACE Program Update: EDA Issues Updated Program Guidelines and Draft Supplemental Guidelines

Client Alert

7.08.24

What You Need to Know

- The Garden State C-PACE program was established as a mechanism to finance commercial renewable energy projects, as well as water efficiency and other authorized improvements.
- On May 29, 2024, the EDA posted updated C-PACE program guidelines along with draft supplemental guidelines.
- Once the draft supplemental guidelines have been finalized, C-PACE program eligibility would presumably be extended to include three pending project categories: new construction projects, gut rehabilitation and refinancing.

By: Maura E. Blau

On May 29, 2024, the New Jersey Economic Development Authority (EDA) posted updated program guidelines along with draft supplemental guidelines for the Garden State Commercial Property Assessed Clean Energy (C-PACE) program.

The supplemental guidelines, once finalized, would expand the C-PACE program to include not only retrofits, but also new construction projects, gut rehabilitation and refinancing. In addition, changes to the draft program guidelines include the addition of water conservation, flood resistant construction, and microgrids as C-PACE eligible improvement categories.

Background

As indicated in this and other previously published Alerts, the C-PACE program was established as a mechanism to finance commercial renewable energy projects, as well as water efficiency and other authorized improvements where "capital providers" pay the up-front costs of the project and are then repaid through a real property assessment levied by the participating municipality.

The program is required by an August 2021 New Jersey law, enacted as part of the Murphy administration's ongoing commitment to address climate change, which requires EDA to establish the C-PACE program to facilitate the financing of eligible projects in municipalities that adopt an opt-in ordinance.

What's New

The EDA's most recent updates include the following changes:

Draft Supplemental Guidelines - Expansion to New Construction Projects, Gut Rehab and Refinancing

Section 2.03 of the prior draft program guidelines stated that until EDA issued supplemental guidelines, a C-PACE project did not include refinancing of projects or new construction upon previously unimproved real property.

Concurrently with issuing the draft supplemental guidelines, Section 2.03 of the program guidelines was revised to somewhat expand upon the exclusion verbiage, including gut rehabilitation, and providing that until EDA issues supplemental guidelines, the program guidelines apply only to retrofit projects and exclude new construction, gut rehabilitation, and refinancing of C-PACE projects.

Presumably, once the May 29, 2024, draft supplemental guidelines are finalized, C-PACE program eligibility would be extended to include these three pending categories, which are defined as follows in both Section 2.03 and in the draft supplemental guidelines as follows:

- "**New Construction Projects**" are defined as C-PACE projects consisting of "new improvements on a previously unimproved property or on property on which all previous improvements have been demolished or otherwise removed." (Article II, draft supplemental guidelines).
- **"Gut Rehabilitation Projects" or "Gut Rehab Projects"** are defined as C-PACE projects "that involve the removal and replacement of all interior (nonstructural) systems, equipment, components or features of a structure, whereby the existing structure will be reduced down to the basic structure or exterior shell (e.g., the foundation system; exterior walls, roofs; and interior structural components such as columns, beams, floors, and structural bearing walls). A gut rehab project may also include structural or nonstructural modifications to the exterior of the structure." (Article III, draft supplemental guidelines).
- **"Refinancing Projects"** are defined as "C-PACE Projects for which the outstanding direct financing and the associated C-PACE assessment is refinanced with a new direct financing. Refinancing of eligible improvements not financed with direct financing or eligible improvements that have been subsequently modified or altered shall be subject to the retroactive financing project provisions in Article V." (Article IV, draft Supplemental Guidelines).

Other Changes to C-PACE draft Program Guidelines - Expansion of Technical Evaluation Process and Types of Eligible Improvement Projects

The updates to the program guidelines, separate from the new draft supplemental guidelines, include an expansion of the technical evaluation process to determine if projects qualify, as well as an expansion of the types of eligible projects.

The prior draft C-PACE program guidelines included the requirements for a technical evaluation process (Article V) consisting of a basic evaluation and, for some projects, a feasibility study, to ensure that the proposed C-PACE project is eligible. The technical evaluation was to be conducted by a professional engineer or qualified energy auditor, depending on the project.

The prior draft C-PACE program guidelines also described a technical review which must be conducted by a qualified technical reviewer, generally described as a person or company which has submitted an application to EDA, been approved, and is then listed on the EDA website. The technical review included verification that the correct technical evaluation was performed.

The updated program guidelines include an expanded Article V, which includes revisions to the technical evaluation process. The changes in the revised Guidelines include:

- Under the updated Article V, the technical evaluation is to be performed by a "technical evaluator" – a professional or entity falling into one of three categories: 1) certified energy manager or certified energy auditor; 2) professional engineer with demonstrated relevant experiences; or 3) contractor with relevant demonstrated experience.
- If the improvements are related to energy efficiency only, a "whole building model" approach can be utilized, which must determine whether the proposed C-PACE project meets or exceeds the applicable state energy subcode.
- If improvements in addition to energy efficiency improvements are proposed, the "prescriptive approach" can be used, which requires an itemized list of each improvement that the qualified capital provider proposes to fund.

Finally, the chart included in the prior draft program guidelines listing eligible improvement categories and required technical evaluations has been expanded to include three additional C-PACE eligible improvement categories:

1. Water conservation
2. Flood resistant construction, hurricane resistant construction, and stormwater management systems
3. Microgrids

We will continue to track the status of the Garden State C-PACE program and will provide updates accordingly. Please contact the author of this Alert with questions or to discuss your specific circumstances.

Related Attorneys