

C-PACE DISTRICT¹ PROGRAM GUIDE

Effective Date: May [1], 2018

Nature and Purpose of this Program Guide

This Program Guide (this "Guide") has been prepared by the Governor's Office of Energy Development ("OED"), an independent body corporate and politic of the State of Utah responsible for directing and administering the Commercial Property Assessed Clean Energy ("C-PACE") District established under Utah Code Ann. § 11-42a (2017) (the "Statute"). Pursuant to Section 11-42a-106 of the Utah Code, this Guide has been prepared for purposes of providing a description of the requirements applicable to the C-PACE District in the State of Utah (the "Program"). This Guide and all provisions hereof are subject to the Statute in all respects, including, without limitation, the provisions of the Statute governing the amendment of this Guide. In the case of any conflict between the provisions of this Guide and the provisions of the Statute, the provisions of the Statute shall control.

THIS GUIDE IS ONLY A REFERENCE DOCUMENT, AND CREATES NO LEGAL RIGHTS IN FAVOR OF ANY PROPERTY OWNER, LENDER, CAPITAL PROVIDER, CONTRACTOR OR ANY OTHER PERSON, NOR DOES IT IMPOSE ANY LEGAL DUTY OR OBLIGATION ON OED.

Any user of this Guide should read the Statute², which contains important information regarding the structure and requirements of the Program, to which the Program and this Guide are each subject to in all respects. The Statute and this Guide constitute OED's sole legal pronouncements pursuant to Section 11-42a-106 of the Utah Code, and any other material, information or data, whether or not obtained from OED, including through any OED electronic or internet media, shall not be considered legal pronouncements nor relied upon for such purpose. Any capitalized term used but not otherwise defined in this Guide shall have the respective meaning given such term in the Statute.

Program Overview

Solely through the availability of voluntary energy assessment liens, the Program is intended by OED to facilitate financing from Capital Providers to property owners to finance eligible improvements as defined under Section 11-42a-102. Subject to the limitations set forth in this Guide and Section 11-42a-205, each such financing will be repaid through voluntary energy assessment payments secured by a voluntary energy assessment lien on the participating property on which the project is located. The assessment may be paid in installments over a period not to exceed 30 years.

¹ Note that this guide only applies to participants in the C-PACE District administered and operated by the Governor's Office of Energy Development (Utah Code Ann. § 11-42a (2017)). Cities and counties seeking information about self-administering C-PACE may refer to [Utah Code Ann. § 11-42a-106 \(2017\)](#).

² Utah Code 11-42a

In furtherance of the Program, OED, through 11-42a-106 shall enter into an agreement with the relevant public electrical utility to establish the scope of the improvement to be financed before creating an energy assessment area. Following this agreement, through Section 11-42a-106 of the Utah Code and subject to the limitations set forth in the Statute, in collaboration with governing bodies that have entered into a C-PACE District Participation Agreement with OED, shall authorize a Capital Provider to transmit to the Governing Body Clerk and Recorder for recording copies of each voluntary energy assessment lien affecting participating properties located in the Governing Body. After recording the voluntary energy assessment lien, the Governing Body Clerk and Recorder shall file a copy of each voluntary energy assessment lien with the Governing Body Assessor and coordinate with the Capital Provider to assign such liens to the Capital Provider. Capital Providers are authorized to administer energy assessment liens billing and collections evidenced by such liens. Certain legal requirements for the proper documentation of financing made under the Program and the related liens are included in Section 11-42a Part 2 of the Utah Code Statute.

Program Fees

Pursuant to Section 11-42a-106, OED's costs of administering and directing the operation of the C-PACE District are financed through program fees charged to participating property owners. The Capital Provider collects the program fees from the property owner at finance closing and remits such fees to OED within 10 days of the closing. Currently, program fees consist of a one-time charge of three percent (3.0%) of the finance amount per project; provided, however, that program fees shall not exceed ninety thousand dollars (\$90,000) per project.

Project Eligibility

Pursuant to Section 11-42a-102, financing may be used to finance eligible improvements to participating properties. Commercial or industrial real property, located within a Governing Body that has entered into a C-PACE District Participation Agreement with OED, may be eligible under the Program, whether such buildings are existing, under construction or to be constructed, if used directly or indirectly or held for one of the following purposes or activities, regardless of whether the purpose or activity is for profit:

- Commercial
- Mining
- Agricultural
- Industrial
- Manufacturing
- Trade
- Professional
- Private or public club
- Lodge
- Business
- A similar purpose
- Dwelling purposes; and contains more than four rental units.

Additionally, to-be-financed proposed improvements must constitute eligible improvements under Section 11-42a-102. Eligible improvements means a publicly or privately owned energy efficiency upgrade, renewable energy system, or electric vehicle charging infrastructure that the property owner has requested or has been or is being installed on a property for the benefit of the property owner. These improvements must be permanently affixed to commercial or industrial real property. Energy efficiency upgrades must be designed to reduce energy or water consumption as described in Section 11-42a-102. Renewable energy systems must not be located in the certified service area of a distribution electrical cooperative. In addition, renewable energy systems within the certificated service territory of a public electrical utility will be limited to no more than 2.0 megawatts, or more than 2.0 megawatts for loads that the public electrical utility does not serve. Electric vehicle charging infrastructure must be permanently affixed to commercial or industrial real property and be designed to deliver electric energy to a qualifying electric vehicle or a qualifying plug-in hybrid vehicle.

Solely for illustrative purposes, examples of potential improvements that may qualify as eligible improvements are listed below. The property owner, Capital Provider, and OED are responsible for evaluating whether a proposed improvement constitutes an eligible improvement as described in the Statute.

- Automated building controls (such as BMS and EMS)
- Automated parking systems or parking that reduces land use
- Battery storage
- Boilers, chillers, and furnaces
- Building envelope (such as insulation, glazing, windows)
- Combined heat and power (CHP) systems
- EV chargers
- Geothermal systems
- High-efficiency lighting
- Hot water systems
- HVAC upgrades
- Hydroelectric systems
- Roof replacement that improves energy efficiency (such as reflective/cool roof, enhanced insulation)
- Seismic resiliency upgrades
- Small wind systems
- Solar PV (roof upgrade/replacement for rooftop systems is also eligible)
- Solar thermal
- Variable speed drives on motors, pumps, and fans
- Vertical transport devices (such as energy efficient elevators, and escalators)
- Water efficient fixtures (such as low-flow faucets and toilets)

A complete list of eligible improvements is provided in Section 11-42a-102.

Process

Insofar as OED's role in the Program is concerned, below are the steps to be taken to designate an energy assessment area, levy an assessment, assign an energy assessment lien to a third-party Capital Provider, and collect an assessment within an energy assessment area in accordance with the Section 11-42a Part 2 and 11-42a-106.

1. After receiving a project eligibility notification from OED, property owner and Capital Provider shall execute a financing agreement that complies with the requirements of the Statute and Governing Law.
2. Upon finance closing, Capital Provider shall provide notice thereof, including the information and documentation required under Section 11-42a Part 2, to OED. For the avoidance of doubt, such notice shall include the financing agreement and exhibits thereto, including the energy assessment lien payment schedule.
3. OED shall designate to the Capital Provider its authority to transmit to the Governing Body Clerk and Recorder the documentation required for recording the voluntary energy assessment lien on the participating property. After recording the energy assessment lien, the Governing Body Clerk and Recorder shall file a copy of the lien with the Governing Body Assessor and coordinate with the Capital Provider to assign such lien to the Capital Provider.

Contact Information

Pursuant to Governing Law and for purposes specified in the Statute, OED has designated a representative to serve as program administrator as set forth below.

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