COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY WAREHOUSE FUND

REQUEST FOR COMMENTS

Background

Under Illinois law, commercial property owners in Illinois can finance or refinance up to 100% of their energy efficiency, renewable energy, and water conservation projects (each, an "Energy Project") on a fixed-rate, long-term basis through a county or municipality (each, a Governmental Unit") that has established a Property Assessed Clean Energy ("PACE") area within its jurisdictional boundaries. A commercial property owner in a PACE area voluntarily enters into an assessment contract with the Governmental Unit, and a bond issue funds the Energy Project. PACE bonds are repaid through an assessment imposed on the commercial property pursuant to the assessment contract, and are never general or moral obligations of taxpayers.

Effective January 1, 2019, Governmental Units may assign assessment contracts originated by capital providers to the Authority in order to utilize its standardized, efficient, and affordable PACE bond financing service. Further, Illinois law provides that capital providers may interim finance Energy Projects secured by the assessment contracts they originate for up to 36 months in order to aggregate a critical mass of assessment contracts to achieve economies of scale for PACE bond issuances.

Public Policy

Staff is examining concepts whereby a portion of the Authority's unrestricted assets from the defeasance of the former Illinois Rural Bond Bank can be dedicated to interim funding small Energy Projects (the "Warehouse Fund") in anticipation of pooled PACE bond issuance. The contemplated Warehouse Fund product will be complementary to the Authority's PACE bond financing service.

Under Illinois law, the Authority may interim fund Energy Projects secured by assessment contracts originated by capital providers for an unlimited duration, in part, because of policy concerns in the event a capital provider is unable to originate and aggregate enough assessment contracts in a program administrator's market to economically issue PACE bonds. For the Authority's purposes, development of the Warehouse Fund product must minimize any opportunity costs associated with otherwise investing the Authority's unrestricted assets at maximum yield per the Authority's Investment Policy Statement.

Proposed Structure

Subject to available funding and the Authority's discretion, the Authority will establish revolving lines of credit in the approximate amount of $2.0 million (each, an "Administrator LOC") within the Warehouse Fund held by its custodian for each program administrator's market that a disparate pool of capital providers may access to interim fund multiple, small Energy Projects. Upon a capital provider underwriting an Energy Project and finalizing a related assessment contract that requires interim financing, the assessment contract will be sent both to the Authority and the program administrator's bond counsel for review. If bond counsel provides assurance to the Authority that the assessment contract meets the Authority's Bond Handbook requirements and the applicable capital provider has covenanted to take-out the interim financing by purchasing PACE bonds, the Authority will enter into a direct lending relationship with the applicable capital provider to make a loan to the capital provider for the principal balance of the assessment contract[1] (each, a "Capital Provider Loan").

At closing of the Capital Provider Loan, the Authority will draw against the applicable Administrator LOC to fund 100% of the Capital Provider Loan and wire proceeds directly to the capital provider for purposes of funding the Energy Project or otherwise holding the proceeds in escrow as needed for construction financing. Accordingly, the capital provider will control any disbursements of project funds it has received from the Authority to the applicable commercial property owner pursuant to any disbursement, escrow or similar agreement between itself and the commercial property owner. Concurrently with the Capital Provider Loan funding, the assessment contract will be recorded and assigned to the Authority as collateral. All Capital Provider Loan transaction documents, including the assessment contract, will be sent to the Authority's custodian for safekeeping for the duration of the Capital Provider Loan term.

[1] *Capital providers underwriting Energy Projects that will utilize the Warehouse Fund should communicate directly with the applicable program administrator regarding its program fees, and fees for its bond counsel and trustee, to better anticipate costs of bond issuance.*

Thereafter, the commercial property owner will make principal and interest payments due under the assessment contract at the times and in the manner as set forth in the PACE area's billing and collecting procedures for the benefit of the capital provider. The capital provider will in turn be obligated to make payments due under the Capital Provider Loan directly to the Authority's custodian, with the outstanding principal balance of the Capital Provider Loan bearing a variable rate of interest equal to the Secured Overnight Financing Rate ("SOFR") plus a premium, to be reset monthly (which premium is subject to the Authority's ongoing consideration and adjustment in definitive documentation, but is currently expected to be at least 45 basis points). The amortization of each Capital Provider Loan will follow the amortization of the related assessment contract, but due dates for payments under each Capital Provider Loan will be set to occur approximately 5 business days after the due dates for payments from the commercial property owner for the benefit of the capital provider in the underlying assessment contract.

Upon the Administrator LOC being fully drawn or at the request of the applicable program administrator, the Authority will issue a pooled PACE bond with series or subseries under a direct-purchase structure through a common trust indenture. Each pooled PACE bond series or subseries will be secured by a specific assessment contract and issued to the originating capital provider for purchase. Pooled PACE bond proceeds collectively pay off all related Capital Provider Loans and recapitalize the applicable Administrator LOC within the Warehouse Fund. Importantly, assessment contracts in both the Administrator LOC and the common trust are never co-mingled or cross-collateralized, ensuring debt service stability in the event of a default under an assessment contract originated by a different capital provider.

Anticipated Documentation

The Authority anticipates documenting each Administrator LOC and Capital Provider Loan as follows:

1. *Program Administrator Master Servicing Agreement*: The Authority will enter into a Master Servicing Agreement with a Program Administrator which would address the following terms:
    a. Description of the Program Administrator's PACE areas in which its programs are offered and the Administrator LOC would be available;
    b. Provision of foundational program documentation from the Program Administrator to the Authority;
    c. Program Administrator agreement to service assessment contracts within its PACE area for which Capital Provider Loans have been made, including ensuring the related Energy Projects meet statutory and program criteria, recording assessment contracts, collecting installments of assessments due under assessment contracts and remitting payments to the applicable capital provider, coordinating with the applicable Governmental Units for enforcement of remedies, assisting the Authority in finding replacement capital if a capital provider is unable to purchase take-out PACE Bonds, reporting of assessment contract installment payments, reconciliation of assessment payments against the assessment contract requirements, among others.
2. *Loan Agreement with Capital Provider*: The Authority will enter into a Loan Agreement with a capital provider (as borrower) with respect to each Energy Project secured by an assessment contract the capital provider wishes to interim finance by the Warehouse Fund. The Loan Agreement will set out the financial terms of the Capital Provider Loan, and certain other covenants, representations and warranties, and indemnification obligations.
3. *Assignment Agreement*: The Authority will take direct assignment of the related assessment contracts and its custodian will hold them, and all Capital Provider Loan transaction documents, for safekeeping for the duration of the Capital Provider Loan term.

The Authority anticipates documenting the pooled PACE bond issuance as follows:

1. *Pooled Bond Indenture*: The Authority will utilize a standardized form indenture (drafted at the Authority's expense), with the applicable Program Administrator as a party in addition to the trustee of the Program Administrator's choosing, similar to the Authority's standardized form indenture for its stand-alone PACE bond issuances but adapted to accommodate multiple capital providers (*i.e.* bond purchasers).
2. *Issuance Certificate(s)*: The series and subseries of bonds issued will be evidenced by issuance certificates to the trust indenture, with the applicable originating capital providers signing as the initial purchasers.
3. *Payoff Documentation*: A standardized payoff letter or statement will be put in place between the Authority and the applicable capital providers to document the payoff of the related Capital Provider Loans.

This Request for Comments is provided solely for informational purposes, and is not intended, nor shall be construed, to be a commitment to lend any funds or issue any bonds for any purpose whatsoever.

Program administrators and capital providers are encouraged to respond by June 30, 2019 by contacting the staff listed below:

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