Almost a year later, California wins again in the effort to reverse a federal agency's 2010 decision that decimated PACE, a promising financing program for residential energy efficiency and renewable investments. Federal District Court Judge Claudia Wilken ruled today that the Federal Housing Finance Authority (FHFA) violated the Administrative Procedure Act's (APA) notice-and-comment requirement when it issued a decision to stop underwriting mortgages on properties with PACE financing. With this decision, the FHFA PACE policy is officially toast until the agency can develop a final rule pending the outcome of an ongoing rulemaking process.

Back in August 2011, Judge Wilken ruled the plaintiffs (Sierra Club, the California Attorney General, Sonoma and Placer Counties, and Palm Desert) had standing to challenge FHFA's action, and the court required FHFA to begin the rulemaking process (my post on the decision here). However, the court allowed the policy to stand, until today (the California Attorney General's Office has more background here).

To be sure, this decision does not clear up the long-term uncertainty around PACE, but it limits the FHFA's ability to issue a sweeping policy undercutting the program. The final rule (whatever form it takes) will be subject to APA requirements and likely judicial scrutiny. The question now is whether FHFA appeals the decision and whether a higher court needs to resolve the split with contrary PACE decisions by New York courts on the issue of standing. Ultimately, local governments may be hesitant to restart their PACE programs until these questions are answered, and they've already missed a crucial window to use now-spent stimulus funds to launch them. But of course there's always Sonoma County, which never stopped its residential PACE program, despite FHFA's ruling.

So the PACE saga will continue, albeit with a decisive win from the Golden State today.