



Dominic Sims,
Chief Executive Officer
ICC Board of Directors

4 35.9g182

s79.88 Tc-.0008 Tc(

13.9, W573 026(a)0(s0ington, DC90014 T(000

Michael L. Murray *General Counsel*

400 N. Capitol St. NW 4th Floor, Washington, DC, 20001 P 202-824-7071 E mmurray@aga.org www.aga.org

Michael L. Murray *General Counsel*

400 N. Capitol St. NW 4th Floor, Washington, DC, 20001 P 202-824-7071

IECC Residential CAR RECPI-6/RECPI-7 EV-ready (subsequently included in the Omnibus proposal approved 9/26/22): Requires residential buildings to have EV-ready provisions in the body of the code.

IECC Residential CAR REPI-111 Electric-ready (subsequently included in the Omnibus proposal approved 9/26/22): Requires residential buildings to have electric-ready provisions in the body of the code.

IECC Residential CAR REPI-155-21 All-Electric Appendix: Requires the installation of all-electric equipment and appliances in new construction.

The appealed provisions of the IECC 2024 commercial and residential editions are in direct conflict with the scope and intent of the IECC. Further, the method by which the ICC provided guidance midway through the IECC 2024 code development process conflicts with the ICC’s stated processes and procedures for issuing guidance and its due process principles. That errant guidance led to the development of a “Consensus Building Forum” that operated without the due process procedural safeguards of the ICC, which in turn led directly to the improper approval of the appealed provisions.

AGA requests that the IECC 2024 development process be stayed until this appeal is resolved and that the provisions listed above not be included in the 2024 edition of the IECC.

Interest of Appellant

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 78 million residential, commercial, and industrial natural gas customers in the U.S., of which 95 percent—more than 74 million customers—receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and

industry associates. Today, natural gas meets one-third of the United States' energy needs.²

AGA's members are directly and materially affected by the significant procedural irregularities and due process violations that occurred during the IECC 2024 code development process and would be materially affected by federal, state, or local adoption of the requirements of these proposals which are inconsistent with the scope and intent of the IECC, disadvantage the competitiveness of natural gas use and end-use applications, a

To clarify and reinforce that the IECC’s purpose is “energy efficiency,” *Leading the Way*, quotes the IECC’s Commercial and Residential Scope and Intent provisions:

COMMERCIAL ENERGY PROVISIONS

C.101.2 Scope

This code applies to the design and construction of commercial buildings.

C101.3 Intent

The International Energy Conservation Code-Commercial provides market-driven, **enforceable** requirements for the design and construction of commercial buildings, providing minimum efficiency requirements for buildings that result in the maximum level of energy efficiency that is safe, technologically feasible, and life cycle cost effective considering economic feasibility, including potential costs and saving for consumers and building owners, and return on investment. . . . Requirements contained in the Code will insrra u m e r s g f

To clarify and reinforce that the IECC’s purpose is “energy efficiency,” *Leading the Way*, quotes the IECC’s Commercial and Residential Scope and Intent provisions: COMMERCIAL ENERGY PROVISIONS C.101.2 Scope C101.3 Intent

Michael L. Murray *General Counsel*

400 N. Capitol St. NW 4th Floor, Washington, DC, 20001 **P** 202-824-7071 **F** 202-824-9132 **E** mmurray@aga.org

policy goal, one that AGA supports, but it is not applicable to the stated scope or intent of the IECC.

The ICC originally interpreted the IECC's

The Issuance of the February 15, 2022, ICC Memorandum Was Itself a Violation of the IECC’s Processes and Procedures and Due Process Principles

The February 15, 2022, ICC Memorandum noted above, reinforces that the Commercial and Residential Consensus Committees are to be developed under a “standards development process.” Notwithstanding this affirmation, the ICC Memorandum itself was counter to widely accepted standards development processes as well as being in conflict with the IECC’s scope and intent. The ICC Memo, unilaterally, without prior notice, nor inviting comment or appeals, dramatically changed the scope of the IECC by expanding the breadth of what may be included as “code content.”

Rather than allowing the development process to proceed to resolution, as the ICC Memorandum concedes has been the historic practice, the following guidance was provided:

The Code Council provides the following direction:

Any content within the scope and intent of the code may be included in the body of the code as minimum requirements or as an adoptable appendix based on the determination of the responsible Consensus Committee. Where content is to be included in an adoptable appendix, the appendix must include mandatory enforceable language.

(Bold and italics in the original).

AGA, the American Public Gas Association, the National Propane Gas Association, and others noted their objections to this change to the clearly stated scope and intent in the middle of the development process of the IECC 2024 edition, without notice, comment, deliberation, or process for appeal and thus in violation of the *ICC Code Development Principles*.⁸

⁸ American Gas Association, American Public Gas Association, National Propane Gas Association, Letter to ICC Board of Directors (December 12, 2022). *See also* Sustainability,

Michael L. Murray *General Counsel*

400 N. Capitol St. NW 4th Floor, Washington, DC, 20001 **P** 202-824-7071 **F** 202-824-9132 **E** mmurray@aga.org **W** www.aga.org

consensus deliberations, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections.¹⁰ These core procedural safeguards apply to all codes body activities, whether by the full committee, subgroup, or task group.

Additionally, openness and transparency, i.e., open proceedings, must be pervasive and is another hallmark to “mitigate the substantial anticompetitive potential inherent” to these governing bodies.¹¹

The February 15, 2022, ICC Memorandum facilitated extra-procedural conduct in direct conflict with the ICC’s procedural safeguards. On information and belief, an ICC unauthorized “Consensus Building Forum” was developed outside of but parallel to the IECC 2024 code development process and violated the core tenets of that process, openness, transparency, balance of interests, due process, an appeals process, and consensus.¹²

On information and belief, this “Consensus Building Forum” was initiated to “discuss REPIs in an informal setting”¹³ wherein a shadow committee was created, and an “omnibus” of proposals was drafted and negotiated outside the IECC code development process and later submitted to the IECC as a whole. This thwarted individual submission of proposals that would be subject to review and comment through ICC processes and procedures for the development of the IECC 2024.

¹⁰ See ICC Code Development Principles: <https://www.iccsafe.org/products-and-services/i-codes/code-development/code-development-procedures/>). See also, ICC Consensus Procedures

On information and belief, the unauthorized, extra-procedural “Consensus Building Forum” was initiated by IECC members who should have been aware of ICC due process procedural safeguards to intentionally bypass those safeguards. On information and belief, ICC staff were aware of the “Consensus Building Forum” activities and that the resulting “omnibus” proposal from individual members of the ‘Consensus Building Forum’ was defective due to the disregard of ICC procedural due process safeguards.¹⁴

This implicit approval of the extra-procedural “Consensus Building Forum” is supported by the ICC accepting the “omnibus proposal” as a whole, and the process used to develop it.

Prior commenters on the constituent parts of the omnibus were not provided notice through the ICC of the opportunity to participate in the “Consensus Building Forum” discussions nor to comment on the omnibus submitted, as a whole, to the IECC. Rather, submission of the omnibus to the IECC was used as a false basis to claim all comments on the constituent parts of the omnibus were addressed.

In addition to lacking ICC due process procedural safeguards, the rejection of proposals on the omnibus’ constituent parts without providing a proper technical rationale is a clear violation of the *ICC Code Development Principles*, ICC’s due process, notice, and comment procedures and is contrary to procedures used by other code and standards developing organizations. In short, the “Consensus Building Forum” constitutes a material and significant irregularity of ICC process and procedure that undermines the entire IECC 2024 code development process.

Rather than follow the transparent and open IECC code development process, the “Consensus Building Forum,” participants pursued individual stakeholder

¹⁴ Even though a code or standard developer itself and its leadership are not aware of an incorrect interpretation of their process, did not approve of it, and did not benefit from it, the code or standard developer may still be held liable if the interpretation had adverse market effects. *See, American Soc’y of Mechanical Eng’rs, Inc. v. Hydrolevel Corp.*, 456 U.S. 556 (1982).

