

February 5, 2024

David Spencer, CBO, ACO
2024 IECC Appeals Board Chair
ICC Board of Directors
Operations Manager
Adams County, Washington

Dear Mr. Spencer:

We submit this written Viewpoint on the 2024 IECC appeals in representation of the American Council for an Energy-Efficient Economy. This Viewpoint is organized into sub-sections that include a summary of relevant International Code Council (ICC) violations of their own written appeals process policy (CP#1-03), general process and procedure issues with the distributed appeals, and the four groups in which the Appeals Board is considering appeals.

1. ICC Violations of ICC Policy Governing the Process for Appeals

The ICC has a very clear policy that governs the IECC appeals process (CP#1-03).¹ We have documented four violations of CP#1-03 by ICC itself, as well as remedial action that the Appeals Board should take to address these violations in relation to the appeals placed before it. Sections 1.1. through 1.4 summarize these issues.

1.1 All posted appeals were submitted after ICC's appeals deadline

Section 3.1 of CP#1-03 states the following: "An appeal shall be in writing, and shall be directed to and received by the ICC CEO within 30 days of notice of the action or inaction which forms the issue being appealed or no appeal shall lie." During an October 7, 2023, meeting, the ICC Board of Directors affirmed the 30-day deadline based on "final committee balloting for the respective committee," referring to the IECC Commercial Consensus Committee and IECC Residential Consensus Committee.² Final committee balloting ended on November 2, 2023, with approval of the draft 2024 IECC with 2/3 supermajority vote of both Consensus Committees. A November 3, 2023, email from ICC staff confirmed that with regard to appeals of this action: "The submittal period for appeals now commences in accordance with Council Policy #1.³ The deadline for complete submittal of appeals is Sunday, December 3 at 11:59 pm Pacific." (See Attachment A.)

There is no mechanism under CP#1-03 by which the appeals deadline could be changed, yet the ICC released a statement on November 29, 2023, stating, "the International Code Council has

¹ <https://www.iccsafe.org/wp-content/uploads/CP01-03.pdf>

² <https://www.iccsafe.org/building-safety-journal/bsj-news/highlights-from-the-international-code-council-board-of-directors-fall-2023-meeting/>

³ Here the ICC staff email included a hyperlink to CP#1-03

extended the deadline to submit appeals relative to the 2024 International Energy Conservation Code® (IECC) to Tuesday, January 2, 2024, at 11:59 PM PT.” This statement was released with no notice of a change to CP#1-03, no notice of ICC Board of Directors approval, no review of consistency with ANSI standards processes, no notice of consultation with interested parties aside from the appellants, and no known consideration of deleterious impacts.

All appeals on the ICC website were received after December 3, 2023, at 11:59 pm PT and, thus, all appeals before the Appeals Board are invalid for review.

Any Appeals Board action other than rejection of all appeals before it would constitute a clear violation of ICC’s written policy and, further, a clear violation of ANSI Essential Requirement of Due Process Section 1.9,⁴ which requires the following: “Written procedures shall govern the methods used for standards development.”

The Appeals Board should reject all appeals without further consideration as they are all invalid under CP#1-03.

1.2 Appeals in regard to committee actions were not processed in accordance with ICC policy

Section 4.2 of CP#1-03 states the following: “If the appeal is in regard to a committee action, the CEO or a designee shall submit the appeal to the appropriate committee within 30 days of receipt of the appeal. No appeal to the Appeals Board shall lie until the committee has reconsidered the matter being appealed. The committee may reconsider substantive and/or procedural matters. The committee shall have full discretion to determine how it conducts the reconsideration, and to determine the information that it deems appropriate for purposes of the reconsideration. The appellant shall have the right to address the committee, under terms and conditions established by the committee, if so requested in writing prior to committee reconsideration.”

All appeals sent to the IECC Appeals Board and posted to the ICC website relate to committee actions: the approval of the draft 2024 IECC by the Residential and Commercial Consensus Committees. The ICC has not submitted the appeals to either committee, and thus has not followed its written procedures vis-à-vis appeals regarding committee actions.

If the Appeals Board decides to accept the ICC’s violation of its appeals deadline policy described in Section 1.1, it should remediate the issue described in this section by denying all appeals as they were remanded to the Appeals Board in violation of CP#1-03, Sections 4.1 and 4.2.

⁴ <https://www.ansi.org/american-national-standards/ans-introduction/essential-requirements>

1.3 Appeals in regard to staff actions were not processed in accordance with ICC policy

Section 4.4 of CP#1-03 states the following: “Appeals of a staff action shall be heard before the Codes and Standards Council. If the staff action is upheld, the appellant may file an appeal as set forth in Section 3.0. The CEO or a designee shall, within thirty (30) days of receipt, place the appeal before the Appeals Board. The Appeals Board shall process the appeal in accordance with this Policy.” All appeals posted to the ICC website include substantive complaints of staff action, with the exception of the AHRI appeal. The Codes and Standards Council has not heard any of the appeals of staff actions. Thus, the ICC has not followed its written procedures vis-à-vis appeals in regard to staff actions. The subject of the APGA appeal is even spelled out as, “Appeal of Staff Actions Pertaining to the 2024 International Energy Conservation Code,” suggesting the ICC did not take at all seriously its own policy on appeals in regard to staff actions.

Further, any appeals based on staff actions were required to be submitted within 30 days of those actions and not within 30 days of the committee action to approve the draft 2024 IECC. The staff actions described in the appeals all predate the final committee action by months, with several noting a staff action from February 2022.

If the Appeals Board decides to accept the ICC’s violation of its appeals deadline policy described in Section 1.1, it should remediate the issue described in this section by denying all appeals as they were remanded to the Appeals Board in violation of CP#1-03, Sections 4.1 and 4.4, and were all received well after 30 days from the staff action being appealed.

1.4 Appeals outside ICC limits on Appeals Board review were submitted to the Appeals Board

Section 6.3.7 of CP#1-03 states the following: “Review by the Appeals Board shall be limited to matters of process and procedure. The Board of Appeals shall not render decisions on the relative merits of technical matters.” The appeals posted to the ICC website include arguments for appeal outside of process and procedure; appeals by AHRI and ICC Northeast Regional Coalition (Region VI) specifically describe themselves as being on technical matters. The ICC placed appeals before the Appeals Board despite all the appeals including matters that are, to varying degrees, beyond the policy limits “to matters of process and procedure.”

If the Appeals Board decides to accept the ICC’s violation of its appeals deadline policy described in Section 1.1, it should remediate the issue described in this section by denying all appeals as they were remanded to the Appeals Board for review of matters that are not open to appeal in violation of CP#1-03, Section 6.3.7.

2. General Process and Procedure Issues with the Distributed Appeals

We established in Section 1 that all appeals in front of the Appeals Board are invalid. Setting aside this fact for now: all appeals before the Appeals Board do not offer resolutions in line with

their complaints. This should be addressed by the Appeals Board before reviewing the details of the four groups the Appeals Board has decided to consider appeals within.

We agree with appellants that ICC has not been a transparent or consistent steward of a standards process throughout the 2024 IECC development.⁵ However, the reasoning of all appeals is deeply flawed in requesting that the resolution to *general* process issues is the selective rejection of *specific* provisions that appellants have identified. There is, rather, a binary choice for the Appeals Board:

1. If the Appeals Board finds with the appellants that ICC made broad errors in process and procedure that rise to a level that requires remedial action, the Appeals Board must reject the entirety of the 2024 IECC that resulted from the process. If the Appeals Board finds general errors in process and procedure that rise to a level that requires remedial action within an individual Consensus Committee – Residential or Commercial – the Appeals Board may consider rejecting the entirety of the relevant 2024 Residential or Commercial IECC.
2. If the Appeals Board rejects the appellants assertions that ICC made broad errors in process and procedure, the Appeals Board must defer to the judgement of the Consensus Committees themselves. The Consensus Committees' final judgement was rendered through a 2/3 supermajority affirmative vote of each Committee, and thus the Appeals Board must let this judgement stand.

We believe Option 2 to be the most prudent course for the Appeals Board as a body constituted solely to adjudicate potential violations of the process and procedures of the IECC development and not its outcome. This action may be further supported by a reasoned interpretation of CP#1-03: The only actions that predate the official appeals deadline of December 2, 2023, by 30 days are approval by the Residential and Commercial Consensus Committees of the draft 2024 IECC. Approval of the full draft 2024 IECC-Residential and approval of the full 2024 IECC-Commercial sections are thus the only actions that can be appealed as the Consensus Committees voted on each *in their totality*. The Appeals Board thus cannot give itself a line-item veto of the 2024 IECC.

A further broad procedural issue is that many of the appeals base their procedural claims on staff actions and *not* the outcome as voted on by the Consensus Committees. These staff actions in most cases far predate the November 2, 2023, final actions by the Consensus Committees. Some appeals are based on specific staff actions of February 15, 2022 (AGA, APGA) and August 1, 2023 (Region VI); all appeals take issue with processing of individual proposals, all of which predate the November 2, 2023, final Committee Actions by months or years. These staff actions would have required appeals within 30 days of those actions, followed by the Codes and Standards Council review mandated by CP#1-03, Section 4.4. As these appeals were

⁵ This may be the only unanimous opinion among the diverse views among the members of the Residential and Commercial Consensus Committees.

received far after the 30-day deadlines that began with the staff actions, they are invalid to be heard by the Appeals Board.

Despite our own reservations with certain provisions of the 2024 IECC draft and the shortcomings of ICC's stewardship of the 2024 IECC development process, for the reasons described in this section and the fact that all appeals under this section were received after the December 3, 2023, deadline: **we urge the Appeals Board to reject all appeals and let the ICC's Consensus Committees' judgement stand.**

3. Scope and Intent

We established in Section 1 that all appeals in front of the Appeals Board are invalid. Setting aside this fact for now: Although CP#1-03 does not allow for appeals based on scope and intent without a process or procedure issue, ICC issued notice that its Board of Directors has chosen to go beyond its written policy – a clear violation of ANSI Essential Requirement of Due Process Section 1.9⁶ – by including appeals concerning scope and intent.⁷ While we believe this action alone necessitates rejection of any appeal considered from this viewpoint, the relevant appeals – those by AGA, APGA, NMHC/BOMA, Region VI – also have no substantive claims to scope or intent violations. There is thus no basis for the Appeals Board to take a line-item veto to the draft 2024 IECC approved by a 2/3 supermajority of both Consensus Committees.

The specific claims of the AGA and APGA letters are very similar, and the general claims of all four relevant appeals are similar in a critical element: their authors make a mistake common by interpreting an *allowance* of non-mandatory appendices as a *requirement* for what *must* be included in non-mandatory appendices. As clarified for those misinterpreting the scope and intent of the 2024 IECC by a February 15, 2022, memorandum from ICC staff⁸: “Any content within the scope and intent of the code may be included either in the body of the code as minimum requirements or as an adoptable appendix based on the determination of the responsible Consensus Committee.” Since the relevant appeals with scope and intent claims note a remedial action would be to place the provisions they disagree with in a non-mandatory appendix, they acknowledge that such provisions are within the scope and intent of the 2024 IECC; they simply misunderstand the difference between an allowance and a requirement.

If there remains any ambiguity as to the intent of the 2024 IECC, it becomes a technical matter for the Consensus Committees to interpret. The Residential and Commercial Consensus Committees discussed scope and intent at length in their deliberations, including in debates over the provisions the appellants claim to be outside the 2024 IECC's scope and intent. The

⁶ <https://www.ansi.org/american-national-standards/ans-introduction/essential-requirements>

⁷ <https://www.iccsafe.org/building-safety-journal/bsj-news/highlights-from-the-international-code-council-board-of-directors-fall-2023-meeting/>

⁸ https://www.iccsafe.org/wp-content/uploads/IECC-Discount-Rates-and-Code-Content-Memorandum_02_15.22.pdf

Consensus Committees settled these issues with more than 2/3 supermajority affirmative vote for the draft 2024 IECC. The Appeals Board has no purview to revisit these technical issues. Further and finally, the relevant appeals are not valid for consideration by the Appeals Board because they regard committee actions, which were required to have been sent to the Consensus Committees for up to 30 days review and reconsideration under CP#1-03, Section 4.2, prior to any placement before the Appeals Board.

For the reasons described in this section and the fact that all appeals under this section were received after the December 3, 2023, deadline: **the Appeals Board must reject all appeals on any basis of scope and intent.**

4. Consensus Building Approaches

We established in Section 1 that all appeals in front of the Appeals Board are invalid. Setting aside this fact for now: Appeals by AGA, APGA and Region VI that argue that a group of voting members working towards an “Omnibus” compromise during the IECC-Residential process are process violations are wholly without merit. Committee Members – and anyone else – are welcome to work together on proposals, discuss ideas and opinions, and find common ground. Committee Members involved in those discussions are then, of course, free to vote as they see fit when items come to the Consensus Committee. On the “Omnibus,” most voted with the group that deliberated on those proposals, but some didn’t. However, this is largely beside the point: efforts to reach consensus should be commended for their adherence to the ideals of the consensus standards process, not used as a basis for appeals.

For the reasons described in this section; the fact that all appeals under this section were received after the December 3, 2023, deadline; and the fact that the ICC violated Sections 4.2 and 4.3 of CP#1-03 by submitting the appeals to the Appeals Board without 30 day review and reconsideration by the Consensus Committees: **The Appeals Board must reject all of these appeals that assert compromise is a basis for appeal.**

5. Procedural Specific Issues

We established in Section 1 that all appeals in front of the Appeals Board are invalid. Setting aside this fact for now: this section contains the only valid matters for the Appeals Board to review per CP#1-03, Section 6.3.7: “Review by the Appeals Board shall be limited to matters of process and procedure.” As such, because the Appeals Board has not identified procedural issues in the AGA or NMHC/BOMA appeals, even if those appeals had been submitted prior to the December 3, 2023, deadline, the Appeals Board would be required to reject them. We address the remaining appeals (those from AHRI, APGA and Region VI) in the subsections below as though they had been received prior to the December 3, 2023, deadline and thus would have been valid appeals. (We refer you back to Section 2 for a discussion of why the draft 2024 IECC should be considered for appeal only its totality.)

5.1 AHRI Appeal

We review statements in the AHRI appeal (indented, in italics) with our comments following the pertinent excerpt.

AHRI requests the Appeals Board review the subcommittee and committee meetings to ensure that interested stakeholders are given an opportunity to present on issues relevant to the committee before final actions are taken. In addition, AHRI requests the Board of Directors ensure the subcommittees are balanced and votes are conducted in accordance with parliamentary procedure. On August 7, 2023, AHRI provided legal, economic, and technical issues to the Modeling subcommittee. However, AHRI is concerned that the vote at the Modeling subcommittee was not conducted in accordance with parliamentary procedure. In addition, AHRI is concerned that the Modeling subcommittee is not balanced with the appropriate number of stakeholders.

This statement is a general statement of concern about a meeting without detail on the item being appealed or any evidence on which to base an appeal.

On September 6, 2023, AHRI raised issues to the IECC-C Consensus Committee (E4C) and the vote to disapprove was presented as a subcommittee action. The E4C voted to disapprove CE2D-54-23 and CE2D-52-23, which proposed to strike the same sections. At the September 13, 2023 E4C meeting, AHRI was prepared to provide a presentation to address specific technical and cost information, and to recommend Sections C406.1.1.1 and C502.3.7.2 and Section C406.2.3.1.2 W02 to be stricken. And, AHRI would have requested reconsideration of CE2D- 54-23.

Unfortunately, the Committee did not hear this information, thus, AHRI is filing an appeal in accordance with ICC CP#1-03. If given the opportunity to present the information, AHRI would have requested that the ICC strike Sections C406.1.1.1 and C502.3.7.2, as proposed by CE2D-54-23, from the 2024 Edition of the International Energy Conservation Code.

The limited information provided by AHRI is misleading. The appeal notes vaguely that “AHRI raised issues” with absolutely no evidence supporting an appeal and no action to address unnamed issues.

AHRI’s appeal is highly misleading regarding reconsideration of CE2D-54-23. AHRI was ineligible to make a motion to reconsider CE2D-54-23 because they didn’t vote with the majority to disapprove CE2D-54-23 during the September 6, 2023, meeting of the IECC Commercial Consensus Committee. However, AHRI did, in fact, request reconsideration, of CE2D-54-23 during the September 13, 2023, meeting of the IECC Commercial Consensus Committee. The minutes for the September 13, 2023, record the following: “Motion to reconsider CE2D-54-23 by Don Mock with a second from Jim Yeoman. Motion to reconsider CE2D-54-23 fails 14-18-1.

Request to move CE2D-33-23, CE2D30-23, and CE2D-31-23 to the end of the agenda. Agenda Approved unopposed.”⁹

There were no procedural issues. AHRI has objections to technical issues, which the Appeals Board cannot address per CP#1-03, Section 6.3.7: “The Board of Appeals shall not render decisions on the relative merits of technical matters.”

For the reasons described in this section; the absence of any other basis for appeal in the AHRI appeal that is within the purview of the Appeals Board; the fact that the AHRI appeal was received after the December 3, 2023, deadline; and the fact that the ICC violated Sections 4.2 and 4.3 of CP#1-03 by submitting the appeals to the Appeals Board without 30 day review and reconsideration by the Consensus Committees: **the Appeals Board must reject the AHRI appeal.**

5.2 APGA Appeal

The APGA appeal vaguely notes due process concerns without evidence. The appeal asserts issues with individual members working together to find compromise as a basis for appeal; a preposterous idea we dismissed with detail in Section 4 of this Viewpoint. The appeal asserts “unreasonable balance” with no evidence to support the claim; the appeal, in fact, notes that the ICC “did not appear” to violate rules on balance. The appeal did find a typographical error by ICC staff on the IECC Commercial Consensus Committee roster that listed the alternate for the U.S. Department of Energy as being from ACEEE when that person is with the Department of Energy; a typographical error on the roster is clearly not a basis for appeal.

Further, the APGA appeal is on “Staff Actions Pertaining to the 2024 International Energy Conservation Code.” The staff actions cited far predate the November 2, 2023, final actions by the Consensus Committees that established the 30-day appeal period for the committee actions. One staff action cited specifically by date in the APGA appeal occurred on February 15, 2022. The appeal refers to “improper processing of (APGA’s identified) Provisions by ICC staff.” However, all these proposals predate the final committee actions by months or even years. These staff actions would have required appeals within 30 days of those actions, followed by the Codes and Standards Council review mandated by CP#1-03, Section 4.4. As these appeals were received far after the 30-day periods that would have begun with the appealed staff actions, they are invalid to be heard by the Appeals Board.

For the reasons described in this section; the fact that the APGA appeal was received after the December 3, 2023, deadline; and the fact that the ICC violated Sections 4.2 and 4.3 of CP#1-03

⁹ At the time of submission of this Viewpoint, the minutes of the September 13, 2023, meeting are in draft form as this was the most recent meeting of the IECC Commercial Consensus Committee; approval of these minutes are on the agenda for the February 13, 2024, meeting of the IECC Commercial Consensus Committee. The draft minutes of the September 13, 2023, meeting are available on the ICC’s website (PDF): <https://www.iccsafe.org/wp-content/uploads/IECC-CE-MINUTES-9.13.23-final-draft.pdf>

by submitting the appeals to the Appeals Board without 30-day review and reconsideration by the Consensus Committees: **The Appeals Board must reject the APGA appeal.**

5.3 Region VI Appeal

The Region VI appeal raises issues with staff handling of its code proposals that were dealt with outside of the committee meetings which should be referred to the Codes and Standards Council as noted above. Their appeal also covers efforts by Residential Consensus Committee members to seek compromises on contentious proposals; we addressed these arguments' lack of merit in Section 4 above. Beyond these issues, Region VI's appeal makes vague claims about committee conduct that is "vigorously unaligned with ICC's Code of Ethics" as well as unsubstantiated claims of committee member misrepresentation and financial affiliations. These serious assertions are made without any evidence and lack the specificity required to evaluate or respond to in written comments. Their request for reevaluation of the committee makeup is relevant for consideration prior to the next code cycle and has no bearing at this point in the 2024 IECC development.

For the reasons described in this section; the fact that the Region VI appeal was received after the December 3, 2023, deadline; and the fact that the ICC violated Sections 4.2 and 4.3 of CP#1-03 by submitting the appeals to the Appeals Board without 30-day review and reconsideration by the Consensus Committees; and the fact the Codes and Standards Council did not hear the appeals within 30 days of the appealed staff action(s) in accordance with Section 4.4 of CP#1-03: **the Appeals Board must reject the Region VI appeal.**

6. Subject Specific Issues

We established in Section 1 that all appeals in front of the Appeals Board are invalid. Setting aside this fact for now: The topics under consideration by the Appeals Board under the banner of "Subject Specific Issues" are all technical matters. The Appeals Board is expressly forbidden from reviewing or commenting on these technical matters by CP#1-03, Section 6.3.7: "Review by the Appeals Board shall be limited to matters of process and procedure. The Board of Appeals shall not render decisions on the relative merits of technical matters."

We argued against the technical matters raised in these appeals in their proper place: at the Consensus Committee meetings. In the end, those arguments prevailed with the Residential and Commercial Consensus Committees voting with a 2/3 affirmative supermajority for the draft 2024 IECC. The Appeals Board shall not, in accordance with ICC policy, review or render decisions on these items. Thus, there should be no review, discussion or deliberation of the "Subject Specific Issues." The Appeals Board must not give itself veto power over the Consensus Committee's action on these matters.

For the reasons described in this section and the fact that all appeals were received after the December 3, 2023, deadline: **the Appeals Board must take no action on these matters, or they will be in violation of ICC policy.**

7. Conclusion

The ICC violated at least four of its own policies described in CP#1-03 when it submitted the appeals by AHRI, AGA, APGA, BOMA/NMHC and Region VI to the Appeals Board. The Appeals Board thus has no purview over these appeals and must either refuse to review them or reject them outright. If the Appeals Board chooses not to follow that clearly proper course of action, we have laid out in detail in this Viewpoint the bases for rejection on grounds of general process and procedure, absence of viable claims of violation of scope or intent, the irrationality of claiming committee members' seeking compromise as a basis for appeal, lack of evidence for procedural violations asserted by some appeals, and ICC policy barring the Appeals Board from reviewing or rendering decision on technical matters. As such, even if the appeals were valid to be reviewed by the Appeals Board, the Appeals Board must reject all appeals on the merits.

Respectfully,



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