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Mr. Dominic Sims, Chief Executive Officer
International Code Council (ICC) Board of Directors
International Code Council
500 New Jersey Avenue, N.W.
6th Floor
Washington, D.C. 20001

February 5, 2024

**Re: Comments of ONE Gas, Inc., in Support of Appeal by American Gas Association of
2024 International Energy Conservation Code**

Dear Mr. Sims, International Board President Stuart, and ICC Board of Directors:

This document presents ONE Gas, Inc.’s (“ONE Gas”) support of the American Gas Association’s (AGA) appeal of the 2024 International Energy Conservation Code (“IECC”) residential and commercial code changes to the 2021 edition of the Code. ONE Gas, a member of AGA, provides natural gas distribution services to more than 2.3 million customers through three operating divisions – Oklahoma Natural Gas, Kansas Gas Service, and Texas Gas Service. In addition to supplying safe, reliable, and low-cost energy, ONE Gas promotes residential and commercial customer energy efficiency to meet the needs of our customers, including low-income consumer groups. ONE Gas participates in activities related to the design and implementation of building energy codes and standards affecting its jurisdictions and customers and has participated in the ICC sponsored development of the 2024 IECC code development process for requirements for residential and commercial buildings.

ONE Gas generally supports the AGA’s appeal and takes this opportunity to elaborate on certain points raised by AGA in its appeal. Furthermore, ONE Gas supports AGA’s proposal for remedial action on the 2024 IECC staying the code development process and promulgation of the Code as developed through the modifications to the second draft and until the appealed provisions are omitted from the final Code document. Specifically, ONE Gas supports the AGA reasons for staying Code promulgation on the following grounds:

A. Due Process Omissions and Violations

ONE Gas' support of the AGA appeal is grounded on the AGA's position related to the ICC's failure to adhere to the "ICC Consensus Procedures" as published¹ and which call for "due process" in the development of ICC standards. Most notably, these Procedures call out requirements for due process as follows:

"1. *Due Process*

The International Code Council (ICC) adheres to the consensus procedures of the American National Standards Institute (ANSI) as set forth in ANSI Essential Requirements: Due process requirements for American National Standards, latest edition, hereafter referred to as "ANSI Essential Requirements."

While the IECC process does not specifically call out its standards development process as an ANSI sanctioned development process (e.g., such as through the registration of the IECC through an ANSI "Project Initiative Notification System), all documentation of the IECC development process is traceable through ICC documentation as meeting ANSI requirements and its "ANSI Essential Requirements." In following with this adherence to the "ANSI Essential Requirements," ONE Gas' appeal support recognizes the Requirements as set forth for ANSI standards as in full force and effect during ICC's development of the IECC. Furthermore, ONE Gas supports AGA's claims of due process omissions and violations related to due process requirements as set forth in the "ICC Consensus Procedures" and the "ANSI Essential Requirements." No other appeals procedures or reference documents are presented by ICC. Additionally, no other standards for "due process" are operative under ICC procedures. Strict ANSI process issues aside, the ANSI requirements outline normative consensus process elements that were not adhered to by ICC in its IECC code development process.

Beyond procedural issues associated with due process, ONE Gas notes that ICC has not adhered to due process in the selection of consensus committee members and characterization of member representation. ICC's process for selecting consensus committee voting members and subcommittee members is opaque and undocumented. No written procedures used by ICC in this process are available to the general public or to standing ICC members for review of appointments. This omission by ICC represents a violation of "Essential Requirements" Section 1.9 "Written Procedures" and Section 1.5 "Openness." The experience of ONE Gas' consultant, Mr. Ted A. Williams, Natural Gas Direct, LLC, has been that application for Residential Consensus Committee membership was denied for no documented reason and instead relegated to subcommittee voting membership. Beyond ONE Gas' experience, the roster for the Residential Consensus Committee illustrates use of undefined *ad hoc* procedures for selection and characterization of members. For example, the current roster identifies a U. S. Department of Energy (DOE) national laboratory employee as a primary and voting representative of the "Public Segment" category of membership rather than a more proper categorization as a "Government

¹ International Code Council, "ICC Consensus Procedures, ANSI Approved," August 2, 2021.

Regulator” category. Based upon the “ICC Consensus Procedures Section 2.1 Interest Categories” this classification is clearly erroneous.

Due process is further frustrated by the manner in which the ICC fills its committee and subcommittee membership and the characterization of the roles of the memberships. For example, the Committee’s appointment of members from the national laboratories do not meet the letter of a ‘regulatory role’ and creates a conflict of interest because staff from this national laboratory (Pacific Northwest National Laboratory - PNNL) clearly advocated federal energy policies that have the force and effect of federal regulations through: (1) the support of federal funding to adopt the IECC; and, (2) making Energy Policy and Conservation Act (EPCA) required determinations regarding energy savings of IECC editions, which serve as federal criteria for energy conservation funding and other requirements.² The role and influence of this national laboratory was widely understood and acknowledged throughout the 2024 IECC code development process, which is an entirely different role from national laboratory activity in the development of preceding editions of the IECC. In those earlier proceedings, national laboratory’s role and influence over the proceedings was much more limited and constrained to analytical support of IECC proposals. In contrast, during the 2024 process, national laboratory staff served both as proponents for proposals as well as implied guarantors of federal support for adoption.³ ONE Gas later learned that ICC invited other organizations to sponsor analytical support for review of proposed changes, but this invitation was not generally known. Given the appropriate opportunity, ONE Gas would have recommended a more objective reviewer organization.

Separately, the committee roster identifies a DOE employee properly as a member of the “Government Regulator” category but identifies his alternate as a member of a non-governmental energy advocacy organization (category F, “Consumer,” which itself is erroneous). The principal violation of “Essential Requirements” in this case is a conflation of interests - federal government employees representing Administration priorities with regulatory officials representing state and local policies and interests. In addition, under Section 2.1, “Openness” and potential questions of the balance of interests required under Section 2.3, “Balance.” In the end, for each seat on the committee, it is important to understand what interest group the seat represents, and whether the mixing of categories of representation depends upon what the agenda items were before a Consensus Committee vote.

ONE Gas notes additional due process violations of ANSI “Essential Requirements” requirements for:

- “Written Procedures” and “Openness” (Sections 1.9 and Section 1.5, respectively with respect to the appointment of Consensus Committee and subcommittee chairs).

² [EPCA “determination” requirements for energy code updates.]

³ The ICC receives federal support through annual federal appropriations and via US Department of Energy funding. See, <https://www.iccsafe.org/building-safety-journal/bsj-hits/just-in-time-for-the-holidays-doe-announces-more-than-half-a-billion-dollars-in-competitive-grants-for-energy-codes/>.

- “Consideration of Views and Objections” (Section 2.6) in Consensus Committee’s failure to notify public commenters of subcommittee and Consensus Committee outcomes and to attempting to resolve comments. The Section 2.6 process as implemented, required commenters the opportunity to be available and to participate in subcommittee and Consensus Committee meetings. However, this standard approach to consensus processes was not provided consistently during the development of the IECC 2024 Edition which denied commentors the opportunity to register to participate.
- “Evidence of Consensus and Consensus Body Votes” (Section 2.7) was not adequately met through the IECC code development process. Here, again, the IECC process does not address this requirement beyond tallying votes and providing cryptic “reason statements” for Consensus Committee and subcommittee actions.

B. Extra-Procedural Implementation of a “Consensus Building Forum” and Actions of “Omnibus Proposals”

As AGA points out, IECC implemented an *ad hoc* and undocumented extra-procedural approach known as “Consensus Building Forums” for handling of proposals and public comments that was outside the IECC written procedures and limited stakeholders, including proponents and public commenters and the broader public stakeholders, opportunities to participate in consideration of actions subsequently sent to the Consensus Committee.

Implementation of the “Consensus Building Forum” approach clearly violates requirements for Section 1.9 “Written Procedures” in the development of the IECC. Beyond these ad hoc procedures, their implementation violates requirements for Section 1.5 “Openness” since most deliberations and resulting development of “omnibus proposals” was not announced to all stakeholders and in some cases not even to the subject proponents or public commenters. Furthermore, use of the “Consensus Building Forum” *ad hoc* approach and reporting to Consensus Committees as “omnibus proposal” results violated Section 2.2 “Lack of Dominance” from the “Essential Requirements” by positioning ‘standards actions’ before the Consensus Committee as ‘consensus actions’ and with limited stakeholder opportunity (or voice) to counter “Consensus Building Forum” actions. In most cases, during the development of omnibus proposals, the Committee attempted to engage original proponent and public commenter participation, but this engagement was neither treated as a requirement or as a priority. The Committee’s use of “Consensus Building Fora” for the purpose of combining consideration of proposals and public comments imposed a concrete and real barrier to stakeholder participation. This barrier was created in part by the addition of more meetings (to include unscheduled meetings) to already busy stakeholder calendars conflicted with IECC engagement needs. Further, the organization of the “Consensus Building Forum” is oxymoronic because it does not pursue consensus beyond the interested and available parties seeking quick resolutions to go before the Consensus Committees. Instead, Consensus Committees with already full agendas, hearing results from a “Consensus Building Forum”, could not and would not provide stakeholders full and fair opportunities to challenge these actions.

C. Exceedance of IECC Scope and Intent

As AGA raises, the IECC process has caused the 2024 IECC to go beyond its defined scope and intent to serve energy policy objectives in markets outside of building energy consumption, Even with the ICC Board of Directors-approved expansion of the Scope and Intent of the IECC to consider externality issues associated with building energy efficiency (including carbon air emissions), the IECC should not have considered public or committee proposals for actions that interfere with building and consumer decision making and/or which imposes energy policy objectives that exceed the historical and primary objective of the IECC being the building energy conservation and to...

*“...provide **market-driven, enforceable requirements for the design and construction of residential 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 savings for consumers and building owners, and return on investment.**” [emphasis added]⁴*

Any requirements or other provisions outside of building energy conservation are out of scope of the IECC. The 2024 IECC diverges from this scope in two primary cases:

- The IECC RE requirements include requirements for electric vehicle (EV) power transfer infrastructure (Section R404.7), which serve no plausible building energy conservation objective and, in fact, can be reasoned as incentivizing building energy consumption increases through vehicle electricity recharging from the building electrical system. Inclusion of this coverage serves an energy policy objective of transitioning the transportation sector to electric vehicles at the direct expense of building energy conservation. Transportation sector energy efficiency is not within the scope of the IECC, and as a minimum code for energy conservation, the imposition of EV infrastructure requirements (for recharging systems that may never get installed or used) is clearly outside of the IECC scope as written. Also, Section R404.7 requirements are not “market-driven” as they increase the cost of building construction, and as discussed in later issues, have not been shown to be life cycle cost effective or improve return on investment.
- IECC RE Appendix RE, “All-Electric Residential Buildings,” provides no building energy conservation benefits. Instead, it serves an energy policy interest of electrifying all buildings and elimination of direct use of fuel gases under the arguable presumption that electrification will save energy. In fact, and as shown by national data, delivery of fuel gases for direct use is of the order of 2.5 times more efficient on a full fuel cycle basis than delivered grid electricity. While Appendix RE is written as appendix material and not as IECC requirements *per se*, it is clearly targeted toward jurisdictional adoption as requirements. If adopted as requirements, it would increase building energy consumption measured on a full fuel cycle basis, which is recommended by the National Academy of

⁴ [2024 IECC RE “Intent”.]

Sciences.⁵ The potential for biasing energy choice in favor of wasteful grid electricity uses (specifically for space and water heating), would impose burdens upon builders and consumers in favor of appliances and equipment that would run counter to the Intent of the IECC, Section R101.3. Here, too, all-electric construction has not been shown to be “market-driven” as it increases consumer exposure to monopolistic electric utility energy rates and therefore cannot be characterized as ‘life cycle cost effective’ or showing to improve return on investment. With respect to ONE Gas’s service territory, fuel switching induced by regulatory measures (including by extension to energy codes) is prohibited and can only be justified as due to market forces. In such cases, adoption of Appendix RE would be prohibited, and further, such prohibitions would be used to oppose adoption of the 2024 IECC. The inclusion of Appendix RE invites unnecessary controversies over 2024 IECC adoption as objectionable requirements, either in minimum requirements or in non-mandatory appendices, and invites much more selective adoption of new energy code requirements.

ONE Gas thanks the ICC for the opportunity to comment on the 2024 International Energy Conservation Code and looks forward to participating in the development of future building energy codes.

Sincerely,



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⁵ National Academies of Sciences, Engineering, and Medicine, *Review of Methods Used by the U.S. Department of Energy in Setting Appliance and Equipment Standards* (2021), available at <http://nap.edu/25992> at 5 & 59 (“NAS Report”). [