



2024 INTERNATIONAL ENERGY CONSERVATION CODE (IECC) COMMERCIAL & RESIDENTIAL COMMITTEE FINAL BALLOTS – APPEALS

Staff Analysis Memo to ICC Appeals Board Appeals Based on Committee Balance, Voting Process, Cost Analysis and Commenting

February 2024

Three entities – the American Public Gas Association (APGA), the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), and the Region VI Chapter of ICC (Region VI) – have appealed certain final actions taken by the 2024 International Energy Conservation Code (IECC) Commercial and Residential Committees. Such appeals relate to whether ICC complied with its procedures regarding committee balance, voting, cost analysis, and consideration of comments. The specifics of these concerns and the requested remedial actions are set forth below, as well as ICC staff’s response to each.

RELEVANT COUNCIL POLICIES AND PROCEDURES

Council Policy 1 – Appeals (CP-01) sets forth the procedures for appeals of “any action or inaction,” and the ICC Board of Directors resolved that all properly submitted IECC-related appeals shall be processed under Section 4.1 of CP-01. For purposes of the appeals at issue, two sections of CP-01 are of particular relevance:

- Section 6.3.7 provides: 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.
- Section 6.3.8 provides: In order to sustain the appeal, or any part thereof, the Appeals Board must find that there was a material and significant irregularity of process or procedure.

Additionally, the IECC Committee Procedures set forth the procedures for the development of the 2024 IECC, Chapter 11 of the International Residential Code (IRC), and future editions. For purposes of the appeals at issue, the following sections of the IECC Committee Procedures are of particular relevance:

DEVELOPMENT COMMITTEES

Two separate committees shall be appointed by the Board:

- Commercial Energy Code Consensus Committee (Commercial Committee).
- Residential Energy Code Consensus Committee (Residential Committee).

Committee requirements include:

- One-third of each Committee shall be constituted by members of the Governmental Regulator interest category.
- The membership of the remaining Committee members shall ensure a reasonable balance of interest without dominance in accordance with the ICC Consensus Procedures.
- Collectively, Committee membership shall represent a diversity of climate zones, organization sizes, businesses and jurisdictions, and a range of experience in building types and energy efficiency strategies.
- Committee appointments will strive to achieve an equitable and diverse Committee membership that represents racial, gender and socio-economic diversity.
- Each Committee shall have a Chair and Vice Chair(s) from the Governmental Regulator interest category.
- All actions by the Committee shall be documented with a reason.
- Committee members shall perform the duties required by the ICC Consensus Procedures and these procedures.

COMMITTEE SUBGROUPS

Subcommittees shall comply with Section 6.0 of the ICC Consensus Procedures and the following:

- The objective of Subcommittees is to provide for broad participation and develop consensus on an issue(s) and report the findings to the Committee for review and final determination.
- Subcommittees shall be established based on a specific scope or duty.
- Subcommittees shall include voting members and interested parties.
- Voting members of the Subcommittee shall be comprised of both Committee members and non-Committee members with the size of the Subcommittee to be determined by the Committee. A reasonable attempt at balance is encouraged whenever possible.
- The Chair and Vice Chair of the Subcommittee shall be members of the Committee.
- A majority of the voting members of the Subcommittee shall constitute a quorum for conducting business. If a quorum is not present; actions may be taken subject to confirmation by letter ballot. Subcommittee actions to be reported to the Committee for review and final determination require a majority vote of voting members present.
- Any interested party may participate in one or more of the Subcommittees

COST IMPACT AND EFFECTIVENESS ANALYSIS

In accordance with the Intent statement in both codes, the intent of the provisions is to provide “minimum efficiency requirements for buildings that result in the maximum level of energy efficiency that is safe, technologically feasible, and life cycle code effective, considering economic feasibility, including potential costs and savings for consumers and building owners, and return on investment.” The Intent statement further notes, “The code is updated on a three-year cycle with each subsequent edition providing increased energy savings over the prior edition”.

In order to achieve this intent, all proposed changes shall include a statement on cost impacts consistent with the requirements of Council Policy 28 Section 4.3.5.6 and proponents are encouraged to include a cost effectiveness analysis. If a cost effectiveness analysis is not provided by the proponent, the committee may request the Department of Energy provide one to support their consideration. When offered by the code change proponent or requested by the committee, a cost effectiveness analysis shall be provided by the U.S. Department of Energy (DOE) national laboratories, if DOE provides such an analysis, and otherwise be conducted by an independent technical consultant in a transparent manner. Underlying assumptions should be clearly documented including compliance with any parameters set by the committees and approved by the Board. Such an analysis shall consider the change’s cost effectiveness for the building owner, occupants and

the energy system as a whole including both initial cost and life-cycle cost and savings. The Committee may develop a consistent set of parameters for use in a cost-effective analysis.

The Committees may use the results of a cost effectiveness analysis as a factor in determining acceptance of a change proposal, but other factors may also be considered including market-readiness.

THE APPEALS AND ICC STAFF RESPONSE

I. Committee Balance

All three of the above-mentioned appellants raise concerns relative to the balance of interests within the IECC Commercial & Residential Consensus Committees and Subcommittees.

APGA, while acknowledging that there was no violation of the requirement that “[n]o single interest category should constitute more than ⅓ of the membership of any committee,” claims that ICC “failed to ensure due process and minimize bias” because there wasn’t a “reasonable balance” on either of the consensus committees (or subcommittees). APGA elaborates further by stating that some of the nine available interest categories contained far more representatives than others (e.g., there were 16 government regulators on the 48-member IECC-R consensus committee), and that there was one instance where one representative had an alternate who was not from either the same organization or interest category.

Region VI’s appeals request that consensus committee makeup (and the nominees’ affiliations) should be reevaluated by the ICC Board to ensure that the code enforcement community has an unbiased, balanced presence separate from other governmental sections. This assertion is based on the claim that many participating governmental regulators have affiliations with electric corporate or utility interests, which influences their decision-making. Additionally, Region VI briefly states that subcommittees “need to have their makeup evenly created as well.”

AHRI’s appeal briefly states its concern “that the Modeling subcommittee is not balanced with the appropriate number of stakeholders.”

ICC STAFF RESPONSE: The ICC Board of Directors’ initial appointments to both Consensus Committees (in addition to any necessary replacement appointments) were confined to the pool of submitted applications and fully conformed to the following requirements listed within the Consensus Committee Procedures:

- One-third of each Committee shall be constituted by members of the Governmental Regulator interest category.
- The membership of the remaining Committee members shall ensure a reasonable balance of interest without dominance in accordance with the ICC Consensus Procedures.
- Collectively, Committee membership shall represent a diversity of climate zones, organization sizes, businesses and jurisdictions, and a range of experience in building types and energy efficiency strategies.
- Committee appointments will strive to achieve an equitable and diverse Committee membership that represents racial, gender and socio-economic diversity.

Additionally, the IECC Residential Subcommittee voting member rosters were approved unanimously by the Residential Energy Code Consensus Committee during its November 11, 2021 meeting. The IECC Commercial Subcommittee voting member rosters were approved at the November 18, 2021 meeting. These subcommittee rosters, the make-up of which is at the discretion of the Consensus Committee, conformed to the following requirements listed within the Consensus Committee Procedures:

- Subcommittees shall be established based on a specific scope or duty.
- Subcommittees shall include voting members and interested parties.

- Voting members of the Subcommittee shall be comprised of both Committee members and non-Committee members with the size of the Subcommittee to be determined by the Committee. A reasonable attempt at balance is encouraged whenever possible.

Finally, APGA asserts that an alternate committee member was not from the same company or interest category. This assertion is incorrect. The member in question changed jobs and became employed by the same organization as another existing committee member, and was then duly appointed as an alternate by the organization. While the committee roster was not immediately updated to reflect this change, the alternate clearly indicated his affiliation on committee calls subsequent to the change.

II. Voting Process

AHRI's appeal raises concerns relative to improper voting procedures of the consensus committees and subcommittees, claiming that the following process surrounding its submitted issues was not conducted in accordance with parliamentary procedure:

- a. On August 7, 2023, AHRI provided legal, economic, and technical issues to the IECC Commercial Modeling subcommittee, and the Modeling subcommittee subsequently voted to disapprove such submissions.
- b. On September 6, 2023, AHRI raised issues to the IECC-C Consensus Committee (E4C) and the Modeling subcommittee's 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.
- c. 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 be stricken. AHRI would have allegedly also requested reconsideration of CE2D-54-23. However, the E4C Committee did not hear this information.

ICC STAFF RESPONSE: The action taken by the Modeling Subcommittee during its August 7, 2023 meeting was done by a majority vote of a quorum of the Subcommittee members. Pursuant to the IECC Committee Procedures, each Subcommittee is authorized to evaluate issues and submit any corresponding recommendations to the Consensus Committee, subject to a duly held majority vote.

The action taken by the IECC-C Consensus Committee during its September 6, 2023 meeting was done by a majority vote of a quorum of the Committee members.

During the IECC-C Committee's September 13, 2023 meeting, a Motion to Reconsider the Committee's action at its September 6, 2023 meeting was made by AHRI with respect to the issues AHRI mentions above. This Motion to Reconsider did not receive a majority vote by the Committee (14 votes in favor, 18 votes in opposition, 1 abstention) and therefore the issue was not reconsidered for discussion. While technically this action should have taken the form of a Motion to Amend or Rescind Something Previously Adopted instead of a Motion to Reconsider, the end result of a failure to obtain a majority vote would have been the same – and in fact, this correct motion type is subject to an even higher supermajority voting threshold. This slight deviation from Robert's Rules of Order does not rise to a "material and significant irregularity of process or procedure" since the same outcome would have been reached.

III. Cost Analysis

Region VI's appeals allege that a number of unjustified cost analyses were made during the consensus committees' evaluation of proposals concerning the installation of infrastructure supporting electric vehicles and solar array systems. Region VI takes the position that it is the responsibility of ICC staff to vet these submitted cost analyses and, if they lack proper substantiation, withhold any associated comments or code changes until such cost information is provided. Region VI further states that cost analysis documentation should accompany proposals of all new code sections, that there should be a committee

overseeing the cost fluctuation in the code cycle, and that there should be an easily accessible template for providing cost justification.

ICC STAFF RESPONSE: There is no policy or requirement stating that ICC has a responsibility to vet submitted cost analyses. ICC staff is only responsible for verifying that a cost impact statement has been provided. Each Consensus Committee developed a set of cost analysis parameters to use in their evaluation of any submitted cost analyses, and the committees complied with those parameters.

IV. Consideration of Comments

Region VI's appeals allege that its proposals were improperly refused for consideration prior to the public comment committee meetings. This concern is based on their assertion that the 2024 IECC Project Team and staff secretary issued a statement that certain topics were no longer open for comment – which is a decision reserved only for the consensus committee – and therefore the discussion on certain submitted proposals was precluded. Further, Region VI claims that certain proposed changes did not receive proper floor time, specifying an instance when a code change discussion was prematurely truncated (by way of a motion and second) because a committee member “didn't like what was being said.”

ICC STAFF RESPONSE: Participants were properly provided advance notice of all comment periods applicable to Public Comment Draft #2. See IECC timeline, ICC Consensus Procedures 9.7, and flowchart. These items clearly indicate that Draft #2 would only be open for comment on substantive technical revisions, and, pursuant to Section 3.5(a) of the ICC Consensus Procedures, the IECC Project Team (which includes the staff secretariat) is authorized to review “proposals, comments and objections and make attempts at resolution of same.” The Project Team's responsive statement that certain topics were no longer open for comment was within the scope of this authority.

On July 13, 2023, ICC staff sent the following email to proponents explaining why their comment proposals were not accepted for review on Public Comment Draft #2:

“Per ICC Consensus Procedures 9.7, comments for consideration were limited to only substantive legislative changes to IECC public comment draft #1. As reviewed by the IECC-Residential Project team Comments either provided new technical content or portions of your comment addressed sections that were not available for comment during this period, as those sections have been resolved by previous committee action. Therefore these comments will not be considered in this public comment period. We encourage you to submit these during the next cycle.”

Additionally, with respect to Region VI's concern that certain proposed changes did not receive proper floor time, there has been no evidence presented that a violation of procedure took place. Regarding the specific instance during the January 19, 2023 meeting when discussion was allegedly prematurely ended, the record shows that proper parliamentary procedure was followed: a motion was properly made and seconded to call the question, and a supermajority vote by the Committee (33 in favor, 4 in opposition) was obtained. The action item discussion began at minute 35 of the meeting and was closed at minute 75, which availed 40 full minutes of healthy discussion on this matter before the question was called.

Lastly, with respect to the Consensus Building Forum proposals (the appeals for which are more thoroughly discussed in a separate staff analysis), the balloting process guidelines provided on pages 1-4 of the Public Input committee action report do not prohibit external discussion or meeting of committee members related to their balloting comments.

Based on the reasons set forth above, Region VI has not presented evidence that any violation of ICC's procedures took place.