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Report on the Code Development Process

Appeals Board Report on Preemption: Code Changes RE107-19 and RE126-19

September 4, 2020

REPORT

In accordance with Section 7.1 of Council Policy 1 (CP 1), the following is the report of the International Code Council Appeals Board on the federal preemption appeal of code changes RE107-19 and RE126-19 submitted by three appellants: American Gas Association (AGA) and American Public Gas Association (APGA), jointly; National Association of Home Builders (NAHB); and Air Conditioning, Heating, & Refrigeration Institute (AHRI). All appeal related documents, including the appeals, have been posted on the appeals webpage.

The appeal was conducted in accordance with Council Policy 1 Appeals. The hearing was held virtually via Webex Event on August 31, 2020, at approximately 9:00 a.m. Central. The hearing adjourned at 12:10 p.m. Central. The Appeals Board consisted of:

- Cindy Davis, CBO, Appeals Board Chair (ex-officio, nonvoting), Code Council Board of Directors Vice President
- Anne Anderson, P.E., S.E. Green Mountain Structural Engineering
- Henry Green, Hon. AIA, Retired, Past President of the Code Council; Former President & CEO of National Institute of Building Sciences
- John Terry, CBO, Retired, Former Assistant Director of Division of Codes and Standards, New Jersey Department of Community Affairs; Past Chair of ICC Codes and Standards Council

APPEALS BOARD RECOMMENDATIONS ON RE107-19 AND RE126-19

Facts:

1. The Appeals Board's authority to take action is limited to violations of process or procedure.

Findings:

1. The Appeals Board found that the appellants did not provide ample information of a violation of any written process or procedure.
2. The appellants did raise significant questions about federal preemption by the laws of the United States.

Recommendations for RE107-19:

The Appeals Board unanimously recommends denial of the appellants' appeals; but further recommends that the Code Council Board of Directors consider whether the code change in question is consistent with the spirit, intent and the mission of the Code Council, its codes and standards. In making this recommendation, the Appeals Board suggests that the Code Council Board initiate an analysis of the preemption issue and determine whether any remedial action should be taken in connection with RE107. In addition, the Appeals Board recommends that the Code Council Board of Directors refer the issue of preemption generally for consideration by the Board Committee on the Long Term Code Development Process.

Recommendations for RE126-19:

The Appeals Board unanimously recommends denial of the appellants' appeals; but further recommends that the Code Council Board of Directors consider whether the code change in question is consistent with the spirit, intent and the mission of the Code Council, its codes and standards. In making this recommendation, the Appeals Board suggests that the Code Council Board initiate an analysis of the preemption issue and determine whether any remedial action should be taken in connection with RE126. In addition, the Appeals Board recommends that the Code Council Board of Directors refer the issue of preemption generally for consideration by the Board Committee on the Long Term Code Development Process.

APPEAL PARTICIPANTS

The following individuals participated in the appeal hearing:

Appellants

AGA/APGA:

- Jim Ranfone, AGA
- Ted Williams, AGA
- Renee M. Lani, APGA

AHRI:

- Caroline Davidson-Hood, AHRI

NAHB:

- Craig Drumheller, NAHB
- Megan Berge, Legal Counsel
- Joshua Lee, Legal Counsel
- Jared Wigginton, Legal Counsel

Participants

- David Beahm, County of Warren, Virginia
- Sharon Bonesteel, Salt River Project
- Marie Carpizo, AHRI (appellant)
- Dave Collins, American Institute of Architects (AIA)
- Shannon Corcoran, AHRI (appellant)
- Brian Cothroll, A.O. Smith Corporation
- Bill Fay, Energy Efficient Codes Coalition (EECC)
- Chuck Foster, Edison Electric Institute (EEI)
- Chris Perry, American Council for an Energy-Efficient Economy (ACEEE)
- David Pettit, National Resource Defense Council (NRDC)
- Steve Rosenstock, EEI
- Lauren Urbanek, NRDC
- Jason Vandever, South-central Partnership for Energy Efficiency as a Resource (SPEER)

Code Council Staff

- Mike Pfeiffer, Senior Vice President of Technical Services
- Melike Oncu, General Counsel

APPEAL PRESENTATIONS AND TESTIFIERS

The following testified at the appeal hearing. Those who provided formal presentations are noted with the file name of the presentation in parenthesis following their name. These files are posted on the appeals web page.

In Support

Appellants:

- Caroline Davidson-Hood, AHRI (Presentation_Hood_AHRI_Preemption)
- Megan Berge, NAHB (Presentation_Drumheller_NAHB_Preemption)
- Jim Ranfone, AGA (Presentation_Ranfone_AGA_APGA_Preemption)
- Ted Williams, AGA
- Renee Lani, APGA

Others in support:

- Steve Rosenstock
- Brian Cothrell
- Chuck Foster

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- Mike Pfeiffer (Presentation_Pfeiffer_ICC_Preemption)

In Opposition

- Lauren Urbanek (Presentation_Urbanek_NRDC_Preemption)
- Sharon Bonesteel
- Chris Perry
- Dave Collins
- David Beahm
- Bill Fay

WRITTEN COMMENTS

The following submitted written comments in accordance with Section 6.1.3 of CP 1. The comments are posted on the appeals [webpage](#), identified by file name in parenthesis.

- Sharon Bonesteel, Salt River Project (Bonesteel_SRP_Preemption)
- Joe Boros, Rheem Manufacturing Company (Boros_Rheem_Preemption)
- Amy Boyce, Institute for Market Transformation (Boyce_IMT_Preemption)
- Dave Collins, The Preview Group; Rep: AIA (Collins_AIA_Preemption_RE126) & (Collins_AIA_Preemption_RE107)
- Caroline Davidson-Hood, Air-Conditioning, Heating, & Refrigeration Institute (Davidson_Hood_AHRI_Preemption)
- Keith Dennis, National Rural Electric Cooperative Association (Dennis_NRECA_Preemption_RE126)
- Craig Drumheller, National Association of Home Builders (Drumheller_NAHB_Preemption)
- Jim Edelson, New Buildings Institute (Edelson_NBI_Preemption)
- Bill Fay, Energy Efficient Codes Coalition (Fay_EECC_Preemption)
- Mike Pfeiffer, International Code Council (ICC Memo to Appeals Board_Federal Preemption_2019_20)

- Dan Kirschner, Northwest Gas Association (Kirschner_NWGA_Preemption)
- Nick O'Neil, Energy 350 (ONeil_energy350_Preemption_RE107)
- Chris Perry, ACEEE (Perry_ACEEE_Preemption)
- Steve Rosenstock, Edison Electric Institute (Rosenstock_EEI_Preemption_RE126)
- Bruce Swiecicki, National Propane Gas Association (Swiecicki_NPGA_Preemption_RE107) & (Swiecicki_NPGA_RE126)
- Eric Truskoski, Bradford White Corporation (Truskoski_Bradfordwhite_Preemption)
- Lauren Urbanek, National Resource Defense Council (Urbanek_NRDC_Preemption)

NONSPEAKING PARTICIPANTS

These individuals were present on the Webex line but did not provide spoken testimony.

- David Pettit, National Resource Defense Council
- Jason Vandever, SPEER

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