

**Appeal of Staff Action:  
International Code Council (ICC) Appeals Board  
American Gas Association (AGA)  
American Public Gas Association (APGA)**

**May 5, 2020**

The American Gas Association (AGA), founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 75 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — more than 71 million customers — receive their gas from AGA members. Today, natural gas meets more than 30 percent of the United States' energy needs.

The American Public Gas Association (APGA) is the national association of publicly-owned natural gas distribution systems. APGA was formed in 1961 as a non-profit, non-partisan organization, and currently has over 730 members in 38 states. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities. In total, there are nearly 1,000 municipally-owned systems in the U.S. serving more than five million customers.

AGA and APGA (collectively, “the Associations”) appeal the processing of the International Energy Conservation Code (IECC) 2021 edition code actions involving four (4) Code Change Proposals under the provisions of CP#1-03 – Appeals:<sup>1</sup>

- RE107-19
- RE126-19
- RE147-19
- CE217-19.

The Associations’ members would be directly and materially affected by state or local adoption of the requirements of these proposals by disadvantaging the competitiveness of natural gas end use applications. The Associations request that the provisions approved in the listed code change proposals above not be included in the next edition of the IECC based on the

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<sup>1</sup> International Code Council, “CP1-03, Appeals,” approved: 05/20/07; revised: 07/27/18. The process to appeal is defined in Section 12.0 of CP 28 – Code Development (approved: 09/24/05; revised 01/22/19), which addresses the right of any party to appeal an action or inaction in accordance with Council Policy 1 Appeals.

Associations' contention that the ICC staff improperly processed-these proposals as detailed below:

### **RE107-19**

This proposal to ban continuously burning pilot lights, which results in a de facto ban on standing pilot ignition of gas-fired appliances, is in conflict with federal law that preempts promulgation of requirements that conflict with federal minimum efficiency standards for products "covered" by the Energy Policy and Conservation Act of 1975 (Pub.L. 94-163, 89 Stat. 871) and its amendments (collectively, "EPCA"), which prohibit promulgation of efficiency standards that differ from federal minimum efficiencies. The proposal justifies banning continuously burning pilot lights, and in consequence standing pilot ignition, on the basis of appliance efficiency. This would result in a divergences from federal standards, the prohibition of which is part and parcel of EPCA. It is immaterial whether appliances for the products addressed in the proposal currently employ continuously burning pilot lights since national standards for safety and other requirements for some of these appliances currently permit designs using continuously burning pilot lights. Furthermore, the de facto banning of standing pilot ignition for residential gas-fired storage water heaters would per se eliminate pilot-designed flammable vapor ignition resistant (FVIR) systems, which are essential life safety systems used in current residential gas-fired storage water heaters certified for safety under the ANSI-recognized Z21.10.1 national standard.

IECC requirements and their potential for conflict with EPCA have previously been argued in public proceedings and should be well understood by ICC staff. In particular, in the October 3, 2008 federal district court decision in the case of AHRI v. City of Albuquerque, the Court noted that "[t]here is no doubt that Congress intended to preempt state regulation of the energy efficiency of certain building appliances in order to have uniform, express, national energy efficiency standards."<sup>2</sup> This finding of federal preemption by the court resulted in an injunction of portions of a city's new code, which adopted and incorporated the 2006 IECC by reference, that conflicted with EPCA. Cases such as this help inform ICC staff of these issues and the need to avoid processing of proposals that would introduce similar conflicts. ICC staff should have either ruled that the RE107-19 proposal was out of order or referred the proposal to a cognizant ICC committee with the recommendation for ruling the proposal out of order. The Associations request that this provision not be included in the next edition of the IECC based on the Associations' contention that the ICC staff improperly processed this proposal and the fact that, if included, any jurisdiction that adopts the 2021 IECC will be in violation of federal law. The

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<sup>2</sup> *Air Conditioning, Heating and Refrigeration Inst. v. City of Albuquerque*, No. 08-633, 2008 WL 5586316 (D.N.M. Oct. 3, 2008), available at [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2008/20081003\\_docket-08-633-MVRLP\\_memorandum-opinion-and-order.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2008/20081003_docket-08-633-MVRLP_memorandum-opinion-and-order.pdf) (The court granted AHRI's requested injunction on portions of the city's new energy conservation code and high performance building ordinance because "of the long-standing federal statutes [(EPCA)] governing the energy efficiency of certain HVAC and water heating products [that] expressly preempt[] state regulation of these products.").

Associations stand ready to present additional support for this recommendation to the ICC Appeals Board.

**RE126-19**

This proposal seeks to set efficiency ratings for residential gas-fired storage water heaters that conflict with federal minimum efficiency ratings in terms of the uniform energy factor (UEF) metric and as set by federal minimum efficiency standards under EPCA. Specifically, the proposal proposes a new Table R403.5.1 (IRC N1103.5.1) to prescribe efficiencies for residential gas-fired storage water heaters that erroneously classifies these water heaters on the basis of “first hour rating” instead of the classification used in the federal standard, which is draw pattern and storage volume as illustrated in the following table extracted from the federal standard:<sup>3</sup>

<b>Product class</b>	<b>Rated storage volume and input rating (if applicable)</b>	<b>Draw pattern</b>	<b>Uniform energy factor</b>
Gas-fired Storage Water Heater	≥20 gal and ≤55 gal	Very Small	$0.3456 - (0.0020 \times V_r)$
		Low	$0.5982 - (0.0019 \times V_r)$
		Medium	$0.6483 - (0.0017 \times V_r)$
	>55 gal and ≤100 gal	High	$0.6920 - (0.0013 \times V_r)$
		Very Small	$0.6470 - (0.0006 \times V_r)$
		Low	$0.7689 - (0.0005 \times V_r)$
		Medium	$0.7897 - (0.0004 \times V_r)$
		High	$0.8072 - (0.0003 \times V_r)$

For this reason alone, in addition to the general issue of conflict with federal standard pre-emption prohibitions similar to those discussed for proposal\_RE107-19 above, ICC staff should have also either ruled that the subject proposal was out of order or referred the proposal to a cognizant ICC committee with the recommendation for ruling the proposal out of order. The Associations request that this provisions not be included in the next edition of the IECC based on the Associations’ contention that the ICC staff improperly processed this proposal that if included in the IECC will be in violation of federal law. The Associations stand ready to present additional support for this recommendation to the ICC Appeals Board.

**RE147-19**

This proposal would impose residential costs of construction upon consumers to comply with requirements for “electrification-ready” electrical wiring and components without justifying its requirements on energy efficiency, conservation, or savings. The construction cost analysis

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<sup>3</sup> See 10 CFR § 430.32(d).

approved by ICC staff in publication of the proposal identifies increases in costs of construction that the proposal would cause, but neither the proponent nor ICC staff provide justification or commentary on energy savings. As such, the proposal does not meet the “Intent” statement of the residential building coverage of the IECC:

**“R101.3 Intent.** This code shall regulate the design and construction of *buildings* for the effective use and conservation of energy over the useful life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective. This code is not intended to abridge safety, health or environmental requirements contained in other applicable codes or ordinances.”<sup>4</sup>

Instead, the proponent offers speculative societal benefits of the proposed requirements without the essential justification on energy savings.

ICC staff should have either ruled that the subject proposal was out of order on the basis of lack of consistency with the “Intent” statement of the IECC or referred the proposal to a cognizant ICC committee with the recommendation for ruling the proposal out of order. The Associations stand ready to present additional support for this recommendation to the ICC Appeals Board.

### **CE217, Parts I and II**

This proposal would impose costs of construction in commercial and residential buildings by requiring electric vehicle (EV) equipment, EV “capable spaces,” and EV “ready spaces” for reasons not relevant to building energy efficiency nor justified on the basis on building energy efficiency. The construction cost analysis approved by ICC staff and included with the publication of the proposal identifies increases in costs of construction that the proposal would cause, but neither the proponent nor ICC staff provide justification or commentary on energy savings to the building. As such, the proposal does not meet the “Intent” statement of the commercial building coverage of the IECC:

**“C101.3 Intent.** This code shall regulate the design and construction of buildings for the effective use and conservation of energy over the useful life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective. This code is not intended to abridge safety, health or environmental requirements contained in other applicable codes or ordinances.”<sup>5</sup>

Instead, the proponent in this case, similar to that of RE147-19, offers speculative societal benefits of the proposed requirements unrelated to building energy efficiency and without the essential justification of energy savings.

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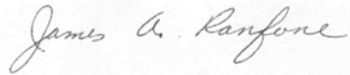
<sup>4</sup> See R101.3 in Ch. 1, Pt. 1 of the Residential Provisions of the 2018 *International Energy Conservation Code*®, which was not amended as a Final Action in the development of the 2021 IECC.

<sup>5</sup> See C101.3 in Ch. 1, Pt. 1 of the Commercial Provisions of the 2018 *International Energy Conservation Code*®, which was not amended as a Final Action in the development of the 2021 IECC.

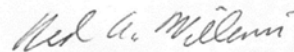
ICC staff should have either ruled that the subject proposal was out of order on the basis of lack of consistency with the “Intent” statement of the IECC or referred the proposal to a cognizant ICC committee with the recommendation for ruling the proposal out of order. The Associations stand ready to present additional support for this recommendation to the ICC Appeals Board.

The Associations look forward to the ICC response to these appeals of ICC staff actions and our appeals are consistent with the provisions with CP#1-03 – Appeals.

Sincerely,



James A. Ranfone  
Managing Director,  
American Gas Association



Ted A. Williams  
Senior Director,  
American Gas Association

Renée M. Lani  
Director of Regulatory Affairs,  
American Public Gas Association