



STATE OF DELAWARE

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF CLIMATE, COASTAL AND ENERGY

STATE STREET COMMONS

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**ENERGY POLICY &
PROGRAMS**

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August 24, 2020

2019 Group B Appeals Board
c/o Mr. Mike Pfeiffer P.E.
Senior Vice President of Technical Services
International Code Council
500 New Jersey Avenue, NW
6th Floor, Washington, DC 20001

Dear Mr. Pfeiffer:

The Delaware Department of Natural Resources and Environmental Control (DNREC) Division of Climate, Coastal and Energy (ICC Organization # 9386879) submits this letter to the 2019 Group B Appeals Board to register Delaware's objection to appeals filed in the three areas outlined below and express support for the 2021 IECC voting process and finalized code.

The appeals stand as a significant threat to the transparent, inclusive, and robust code development process crafted by the ICC over the past several code cycles. DNREC objects to the other stakeholders' attempts to severely limit designated state and local government officials' participation, access, eligibility, and voting rights in the IECC development process.

Under Delaware law (16 *Del.C.* §7602) DNREC is charged with reviewing the state energy conservation code triennially for potential updates and adopt the newest/highest available versions of the IECC and ASHRAE energy code standards. Following a lengthy regulatory development process including stakeholder engagement, Delaware adopted the 2018 IECC statewide in June 2020. DNREC has a strong interest in the outcome of the 2021 IECC process and future IECC code development cycles as these codes will be evaluated in Delaware during our next triennial code review. As a dues-paying Governmental Member of the ICC, DNREC expects to be eligible to participate in the next ICC code development cycle as a full voting member without interference from other stakeholders.

DNREC joined the ICC after obtaining a Governmental Membership in 2019 in order to obtain additional technical resources for the Department's roll-out of the 2018 IECC and to participate in future IECC code cycles. While DNREC was not eligible to vote in the 2021 IECC development due to the date we opened our membership, the process and outcome, up to these appeals, were closely followed with concern by our staff.

We would like to address the following three areas of the appeals:

1. The attempt to overturn the online vote

It is our position that the 2021 IECC development process and online vote was particularly accessible and fair as it allowed for input and participation from an inclusive group of stakeholders. The online voting system allows for a more diverse group of stakeholders to participate and vote in the code development process. Without the virtual participation and voting option, many governmental staff would find themselves unable to participate due to travel budget and staff time constraints. Attending 5 or 6 day in-person committee meetings and hearings is impossible for many stakeholders, especially Governmental Members that must consider the prudent use of taxpayer resources when committing to business travel. Utilizing the virtual voting through the Online Governmental Consensus Vote allows states like Delaware to offer their expertise and vote in accordance with their unique needs and views.

The accessible process used in the 2018 and 2021 IECC development cycle is the most consistent with public interest, not just a narrow subset of stakeholders that are able to attend week-long hearings in-person. As such, Online Governmental Consensus Vote should be preserved in the 2021 IECC and future code development cycles. The needs and subsequent votes of Governmental Members may differ from those represented by the development committee, or the members that voted live in Las Vegas, but that does not make them less valid or deserving of being overturned through this appeal.

2. The attacks on governmental voting members' credentials to be voters

DNREC submitted five staff members to the ICC for voter validation upon opening its Governmental Membership. While DNREC is eligible to designate up to twelve voting representatives, only staff members that strictly met the eligibility definition in the ICC Bylaws were submitted for validation, as such, DNREC only submitted a roster of five representatives for validation, despite being eligible to submit more as per our membership classification. In future code development cycles, DNREC intends to again identify the staff that strictly meet the ICC Bylaws voter eligibility definition and submit the updated roster for validation. The staff on the Delaware roster have valuable expertise that should be included in the IECC development process. It is the ICC's role, not other stakeholders, to validate Governmental Members eligibility to vote.

We believe it is of great benefit to have a greater percentage of eligible voting members participate in the code development process, not less. Governmental Members already follow the requirements to become members and submit eligible voters to the ICC for validation through the procedures established by the ICC Bylaws. Governmental Members then bring their informed and knowledgeable staff members to the code development process. These voters consider the issues presented to them and cast their votes informed by the unique needs in their states. The attack in this appeal on Governmental Members understanding of what they voted on without knowing the voters is unfounded. Additionally, it is DNREC's

understanding that an internal review by the ICC following the most recent code cycle found that the review and validation process worked well and did not result in any voting irregularities. As such, it is DNREC's opinion that the appeal regarding validation procedures and Governmental Members' credentials should be denied.

3. The attempts to remove electrification measures from the code

We understand that testimony was entered during the development process that argued the IECC may not be the right place for electrification measures. The vote on these measures occurred fairly, not violating any of the ICC rules, and the voting Governmental Members chose to disagree with the testimony from earlier in the process. As a result, the electrification measures made it to the final version of the 2021 IECC. When news of the finalized version of the 2021 IECC was announced and it included electrification measures, like EV-ready buildings, Delaware was very pleased to see the energy codes move forward in this way. Electrification is a critical piece of energy planning and conservation measures that will be implemented to meet Delaware's climate goals. DNREC is midway through the development of a comprehensive Climate Action Plan of which, building and transportation sector electrification play a critical role. Electrification measures in the IECC will help us implement our Climate Action Plan and reach our climate goals. DNREC strongly objects to any attempts to remove electrification measures from the 2021 IECC or future editions of the code.

Thank you for maintaining the integrity of this system and providing the opportunity for continued engagement on these matters. I encourage the ICC to uphold the voting results.

Thank you for your consideration.

Sincerely,

Robert G. Underwood
Energy Programs Administrator