



Meeting Minutes

ICC Board of Directors Teleconference Meeting

03/18/2024 | 10:00 AM Central Time

Webex and Microsoft Teams Meetings

Call to Order – President Tom

President Tom called the meeting to order.

A quorum was established with all following directors present:

Stuart Tom, PE, CBO, FIAE, President

David Spencer, CBO, CBCO, Vice President

Mike Boso, Secretary-Treasurer

Michael Wich, CBO, Immediate Past President

Jack Applegate, CBO, CPI, CHI

Ben Breadmore

Kris Bridges, MCP, CBO

Ron Clements

Shirley Ellis, CBO

Ron Hampton, MCP, CBO

Andre Jaen, MCP, CBO, CSP

Steve McDaniel, CPCA

Randy Metz, MPA, EFO, CFO, FM

José Roig, CBO, CCEA

Michael Savage, MCP, CBO, CFPS, CEI-M

Jim Sayers

Blake Steiner, CBO

Angie Wiese, PE, CBO

ICC staff present during the Regular Session portion of the meeting included CEO Dominic Sims, General Counsel Jordana Rubel, Deputy General Counsel Will Coffman, Senior Vice President of Tech Services Russ Manning, Director of Energy Program Kris Stenger, and Senior Vice President of Government Relations Gabe Maser.

The Regular Session portion of this meeting was livestreamed to the public, which was accessible via a link on the IECC Appeals webpage of the ICC website.

Regular Session (R)

R1.0 2024 Appeals Board Report and Recommendations – Hearings

President Tom reminded the Board to mute their microphones and turn off their video when not speaking to preserve bandwidth.

President Tom acknowledged Vice President and Chairman of the 2023-24 Appeals Board David Spencer as well as other members of the Appeals Board.

President Tom discussed the procedures for presenting to the Board during today's meeting.

Appellant 1 for Appeals 1-4: Greg Johnson, Regulatory Consultant, on behalf of BOMA and NMHC.

Appellant 2 for Appeals 5-6: Greg Gilbert, Deputy Code Official, on behalf of Region VI

Appellant 3 for Appeals 7: Michael Murray, General Counsel on behalf of the AGA

Appellant 4 for Appeal 8: Renee Lani, General Counsel on behalf of the APGA

Appellant 5 for Appeal 9: Marie Carpizo, General Counsel for AHRI

President Tom introduced SVP Tech Services Manning, who presented ICC's position.

President Tom provided an opportunity to interested parties to provide testimony in support and in opposition.

Those in support of the appeals:

Matt Beauregard, Region VI

Ray Steadward, Region VI

Paul Demers, ICC Consensus Committee member

Those in opposition of the appeals:

Phil Crone, LBA

Brian Shanks, Beazer Homes

Erin Bordelon, DR Horton

Jeremy Williams, DOE

Michael Tillou, PNNL

Mike Waite, ACEEE

Emma-Gonzales-Laders, NYS Dept. of State

Vanessa Warheit, EVCAC

Jim Earley, Edison Electrical Institute

The board recessed for five minutes.

The board asked questions of the appellants.

The board recessed for five minutes and dialed into the Microsoft Teams meeting to dispense with Executive Session.

Motion made and seconded to enter Executive Session. Motion passed unanimously.

Executive Session (E)

Secretary-Treasurer Boso called the roll. A quorum was established with all following directors present:

Stuart Tom, PE, CBO, FIAE, President
David Spencer, CBO, CBCO, Vice President
Mike Boso, Secretary-Treasurer
Michael Wich, CBO, Immediate Past President
Jack Applegate, CBO, CPI, CHI
Ben Breadmore
Kris Bridges, MCP, CBO
Ron Clements
Shirley Ellis, CBO
Ron Hampton, MCP, CBO
Andre Jaen, MCP, CBO, CSP
Steve McDaniel, CPCA
Randy Metz, MPA, EFO, CFO, FM
José Roig, CBO, CCEA
Michael Savage, MCP, CBO, CFPS, CEI-M
Jim Sayers
Blake Steiner, CBO
Angie Wiese, PE, CBO

ICC staff present during the Executive Session portion of the meeting included CEO Dominic Sims, General Counsel Jordana Rubel, Deputy General Counsel Will Coffman, Senior Vice President of Tech Services Russ Manning, Director of Energy Programs Kris Stenger, Senior Vice President of Government Relations Gabe Maser, VP of Innovation Ryan Colker and Executive Vice President of Customer Engagement Whitney Doll.

President Tom discussed the order of the Executive Session actions.

President Tom introduced CEO Sims, who provided background information on the staff's assessment of the appeals process thus far, reiterated the importance of this decision, and touched on the process for releasing the board's decision to the public.

CEO Sims introduced SVP Manning, who provided an overview of the interrelation between the preemption issue and the appeals. Staff recommended a path that provided an overall resolution which relied on legal analyses by outside counsel to resolve preemption while

avoiding disrupting the consensus achieved in the code development process and the subject of the appeals. A discussion ensued.

E1.0 IECC Federal Preemption Issues: Report on Committee and ICC Staff Recommendations

CEO Sims introduced General Counsel Rubel, who in turn introduced Brendan Anderson of law firm Morgan Lewis & Bockius and reiterated the importance of confidentiality surrounding these proceedings.

The full text of each motion (I1.0 – I3.0 and II1.0 – II2.0) within this item can be found within the attached **Exhibit A – E1.0 Motions**.

Preemption Issue #1

General Counsel Rubel provided background on preemption and an overview of the first preemption issue being addressed by the Board today: whether it's possible to comply with Sections C502.3.7.1 and C406.1.1.1 for all building types using minimum efficiency equipment. A discussion ensued.

General Counsel Rubel introduced Director of Energy Programs Stenger, who provided input regarding the technical aspects of the preemption issues. A discussion ensued.

Motion made and seconded to approve staff recommendation **I1.0**. A discussion ensued.
Motion failed.

Motion made and seconded to request information from PNNL and AHRI on whether or not restaurants and hotels are the only two building types affected and to revisit this issue at the April board meeting in Orlando, though earlier if possible.

A discussion ensued regarding whether this would delay the current code cycle.

Motion passed unanimously.

Preemption Issue #2

General Counsel Rubel continued her presentation specific to whether all building types can comply with the thresholds in Appendix CD (the 2030 Glide Path) using minimum efficiency equipment.

Motion made and seconded to move the entire appendix CD to a resource.

A discussion ensued regarding the fact that the performance path within the appendix is not preempted and whether it should be removed in addition to the prescriptive path.

Motion withdrawn.

Motion made and seconded to approve staff recommendation **I2.0**.

Motion passed with [REDACTED] voting against the motion. Motion passed 17-1.

Preemption Issue #3

General Counsel Rubel continued her presentation specific to inclusion of all electric requirements in Appendix CG.

Motion made and seconded to approve staff recommendation **I3.0**.

A clarifying point was made that the resource will be included within the IECC code book and the cautionary note would appear alongside the resource.

Motion passed unanimously.

Preemption Issue #4

General Counsel Rubel continued her presentation specific to whether it's possible for all building types to comply with the thresholds in Appendix RG (the 2030 Glide Path) using minimum efficiency equipment.

Motion made and seconded to approve staff recommendation **II1.0**.

A discussion ensued.

A friendly amendment to the motion on the table was proposed to include within the proposed note the specific climate zones where compliance options may be limited. Friendly amendment accepted.

Amended motion passed with [REDACTED] voting against the motion. Amended motion passed 15-3.

Preemption Issue #5

General Counsel Rubel continued her presentation specific to inclusion of all electric requirements in Appendix RE. A discussion ensued.

Motion made and seconded to approve staff recommendation **II2.0**. Motion passed unanimously.

The board recessed for 10 minutes.

E2.0 2024 Appeals Board Report and Recommendations – Board Deliberation

President Tom provided an overview of the forthcoming staff presentation and Appeals Board chair presentation regarding the 2024 appeals.

CEO Sims discussed the overall improvements made to energy efficiency within the 2024 IECC from the 2021 IECC as well as other high-level concepts to be aware of as the board considers the merits of each appeal.

President Tom introduced SVP Manning, who provided an overview of the nine appeals and the recommended actions with the assistance of VP of Innovation Ryan Colker and General Counsel Rubel.

General Counsel Rubel, with the assistance of David Brenneman of law firm Morgan Lewis & Bockius, addressed the American Gas Association's allegations of antitrust violations.

President Tom introduced SVP Maser, who provided an overview of the potential public response to the Board's actions on the appeals.

President Tom introduced Vice President Spencer, who discussed the Appeals Board's work and report.

Motion made and seconded to approve the three recommendations as well as the nine recommended denials of the appeals.

Motion withdrawn.

Motion made and seconded to hear the appeals individually followed by the three recommended actions from the Appeals Board individually. A discussion ensued. Motion passed unanimously.

The board recessed for five minutes.

Appeal #1

Motion made and seconded to approve the following recommended motion for Appeal 1:

The Appeals Board finds that the appeal submitted by BOMA/NMHC concerning the Non-Heat Pump Penalty has not demonstrated a material and significant irregularity of process or procedure, and therefore recommends the ICC Board of Directors deny the appeal.

A discussion ensued.

Motion failed.

Motion made and seconded to uphold Appeal 1 by striking the provisions of C406.1.1.1 and C502.3.7.1 based on scope and intent.

Friendly amendment proposed and accepted to move the provisions C406.1.1.1. and C502.3.7.1 to an appendix.

A discussion ensued.

CEO Sims recommended that changes to the 2024 IECC be referred back to the applicable IECC committee to assure that the modifications dictated by the appeals were drafted properly and that errors were reduced in the final edition of the code. Further discussion ensued.

Amended motion passed with [REDACTED] voting against the motion. Motion passed 13-5.

Appeal #2

Motion made and seconded to approve the following recommended motion for Appeal 2:

The Appeals Board finds that the appeal submitted by BOMA/NMHC concerning Demand Responsive Controls has not demonstrated a material and significant irregularity of process or procedure, and therefore recommends the ICC Board of Directors deny the appeal.

A discussion ensued.

Motion failed.

Motion made and seconded to uphold Appeal 2 and strike the provisions for demand response controls and place them in an appendix based on scope and intent.

Motion passed with [REDACTED] voting against the motion. Motion passed 12-6.

Appeal #3

Motion made and seconded to approve the following recommended motion for Appeal 3:

The Appeals Board finds that the appeal submitted by BOMA/NMHC concerning Electric Vehicle Charging Infrastructure has not demonstrated a material and significant irregularity of process or procedure, and therefore recommends the ICC Board of Directors deny the appeal.

A discussion ensued.

Motion failed.

██████████ exited the meeting at 4:20 PM CST.

Motion made and seconded to place the provisions relative to electrical vehicle charging infrastructure into an appendix based on scope and intent. A discussion ensued.

Motion passed with ██████████
██████████ voting against the motion. Motion passed 10-7.

Appeal #4

Motion made and seconded to approve the following recommended motion for Appeal 4:

The Appeals Board finds that the appeal submitted by BOMA/NMHC concerning Energy Storage Systems has not demonstrated a material and significant irregularity of process or procedure, and therefore recommends the ICC Board of Directors deny the appeal.

A discussion ensued.

Motion failed.

Motion made and seconded to move the provisions relative to energy storage system readiness to a non-mandatory provision of an appendix based on scope and intent.

A discussion ensued.

Motion passed with ██████████
██████████ voting against the motion. Motion passed 12-5.

Appeal #5

Motion made and seconded to approve the following recommended motion for Appeal 5 based on a lack of specific request within the appeal:

The Appeals Board finds that the technical appeal submitted by Region VI has not demonstrated a material and significant irregularity of process or procedure, and therefore recommends the ICC Board of Directors deny the appeal.

A discussion ensued.

Motion passed unanimously.

Appeal #6

Motion made and seconded to approve the following recommended motion for Appeal 6:

The Appeals Board finds that the general appeal submitted by Region VI has not demonstrated a material and significant irregularity of process or procedure, and therefore recommends the ICC Board of Directors deny the appeal.

A discussion ensued.

Motion failed.

Motion made and seconded to uphold in part appeal 6 to strike the electric-ready, solar-ready and EV-charger ready provisions and move these provisions to the appendix based on scope and intent.

A discussion ensued.

A point of clarification was made asking whether this motion also includes the relevant renewable energy provisions.

Motion amended by the motion-maker to include only provisions 404.5, 404.6 and 404.7 of the renewable energy provisions.

Amended motion passed with [REDACTED] voting against the motion. Motion passed 12-5.

Appeals #7-9

Motion made and seconded to approve the recommended motions for Appeals 7 – 9 as the relief sought by these appeals had already been provided through the upholding of the aforementioned Appeals. These three recommended motions are as follows:

- Appeal 7: The Appeals Board finds that the appeal submitted by AGA has not demonstrated a material and significant irregularity of process or procedure, and therefore recommends the ICC Board of Directors deny the appeal.
- Appeal 8: The Appeals Board finds that the appeal submitted by APGA has not demonstrated a material and significant irregularity of process or procedure, and therefore recommends the ICC Board of Directors deny the appeal.
- Appeal 9: The Appeals Board finds that the appeal submitted by AHRI has not demonstrated a material and significant irregularity of process or procedure, and therefore recommends the ICC Board of Directors deny the appeal.

A point of clarification was made confirming that denying these appeals would not undo any other board actions taken earlier within the day, including but not limited to the actions with respect to preemption issues.

Motion passed unanimously.

President Tom tasked CEO Sims with drafting a report summarizing the Board's actions today.

A point of clarification was made that the first preemption issue (I1.0) is still to be dispensed with, and staff provided clarification that no action is needed with respect to the preemption issue based on the board's decisions on the appeals.

A discussion ensued regarding adding a fourth recommendation to the three Appeals Board recommendations: this board review and evaluate the appeals process and make adjustments that render the process more efficient.

A discussion ensued regarding encouraging board members to bring forth recommendations if these three recommendations are not approved.

Appeals Board Recommendations:

The Appeals Board proposed the following three additional recommendations:

1. Following completion of the 2024 IECC and preceding commencement of development of the 2027 IECC, the Appeals Board recommends that the ICC Board of Directors should work with staff to clarify the scope and intent, while preserving the outcomes of the consensus process.
2. The Appeals Board recommends that ICC staff and the Board of Directors provide additional education on the standards development process, the role of the consensus committees, and the opportunities for engagement by governmental representatives and other stakeholders.
3. The Appeals Board recommends that the ICC Board clarify that the role of ICC staff is to ensure the required elements of the cost impact are provided, and that it is the responsibility of the committee to determine if the cost impact information provided is sufficient to inform the committees decision making process in accordance with applicable council policies and evaluate the validity of the cost analysis itself.

Motion made and seconded to approve these three Appeals Board Recommendations plus an additional fourth one – for this board to review and evaluate the appeals process and make adjustments that render the process more efficient (as stated above).

A friendly amendment was made and accepted for the First Recommendation to read as follows:

Following completion of the 2024 IECC and preceding commencement of development of the 2027 IECC, the Appeals Board recommends that the ICC Board of Directors should work with staff to clarify the scope and intent.

Amended motion passed unanimously.

Motion made and seconded to exit Executive Session. Motion passed unanimously.

Adjournment

Meeting adjourned at 5:30pm CT.

Exhibit A – E1.0 Recommended Motions

Recommended Motion I1.0:

[REDACTED]
[REDACTED]
[REDACTED] Rather than delete this

section entirely, as requested by AHRI, ICC staff recommends a more targeted solution of adding exceptions for certain restaurants and hotels, which were the specific building types with which AHRI expressed concerns. The language of the full sections as approved by the consensus committee are captured below with proposed exceptions highlighted. As the code will be amended through a continuous maintenance process, if the Committee is able to establish more definitively that compliance is possible for these building types with minimum efficiency equipment, the Board may remove these exceptions.

C406.1.1.1 Buildings without heat pumps. The number of efficiency credits required by Section C406.1.1 shall be multiplied by 1.25 for the following:

1. Buildings using purchased energy that is not electricity for space heating or service water heating.
2. Buildings with electric storage water heaters that are not heat pumps.
3. Buildings with total heat pump space heating capacity less than the space heating load at heating design conditions calculated in accordance with Section C403.1.1.

Exceptions:

1. Portions of buildings devoted to manufacturing or industrial use.
2. Buildings complying with all of the following:
 - 2.1 The building's peak heating load calculated in accordance with Section C403.1.1 is greater than the building's peak cooling load calculated in accordance with Section C403.1.1.
 - 2.2 The building's total heat pump space heating capacity is not less than 50 percent of the building's space heating load at heating design conditions calculated in accordance with Section C403.1.1.
 - 2.3 Any energy source other than electricity or on-site renewable energy is used for space heating only where a heat pump cannot provide the necessary heating energy to satisfy the thermostat setting.
 - 2.4 Electric resistance heat is used only in accordance with Section C403.4.1.1.
- 3 Low-energy buildings complying with Section C402.1.1.1.
- 4 Portions of buildings in Utility and Miscellaneous Group U, Storage Group S, Factory Group F or High-Hazard Group H.
- 5 Buildings located in Climate Zones 0A, 0B, 1A, 1B, 2A and 2B.

6 Buildings of Group A-2 Occupancy with commercial kitchens and Group R-1 Occupancy

C502.3.7.1 Additions not served by heat pumps. The number of efficiency credits required by Section C502.3.7 shall be multiplied by 1.25 for the following:

1. Additions using purchased energy that is not electricity for space heating or service water heating.
2. Additions served by electric storage water heaters that are not heat pumps.
3. Additions served by total heat pump space heating capacity less than the peak space heating load at heating design conditions calculated in accordance with Section C403.1.1.

Exceptions:

1. Additions to buildings of Group A-2 Occupancy with a commercial kitchen
2. Additions to buildings of Group R-1 Occupancy
3. Additions complying with all of the following:
 - 3.1 The addition's peak heating load calculated in accordance with Section C403.1.1 is greater than the addition's peak cooling load calculated in accordance with Section C403.1.1.
 - 3.2 The addition's total heat pump space heating capacity serving the addition is not less than 50 percent of the addition's space heating load at heating design conditions calculated in accordance with Section C403.1.1.
 - 3.3 Any energy source other than electricity or on-site renewable energy is used for space heating serving the addition only when a heat pump cannot provide the necessary heating energy to satisfy the thermostat setting.
 - 3.4 Electric resistance heat serving the addition is used only in accordance with Section C403.4.1.1.

Recommended Motion I2.0:

[REDACTED] ICC staff recommends retaining the performance path in Appendix CD, with no user note regarding the possibility of preemption.

[REDACTED]

[REDACTED] ICC staff recommends moving the prescriptive path into a resource with the below note cautioning about the risk of preemption. As the code will be amended through a continuous maintenance process, if the

Committee is able to establish that compliance is possible for all building types with minimum efficiency equipment, the Board may move this content to the Appendix and remove this note.

ICC Council Policy-49 Note

This resource is an accompaniment to the performance pathway included within Appendix CD and is intended for adopting authorities that wish to extend beyond the mandatory provisions of this code toward Zero Net Energy goals. For jurisdictions in the United States, compliance options for this prescriptive path may be limited if using only minimum efficiency mechanical and service water heating equipment. Adopting authorities may need to consider alternative means to expand methods for compliance under these conditions (see Section C104.1). Adopting authorities should be aware of potential preemption issues based on the Energy Policy and Conservation Act when evaluating whether to adopt the content in this resource. See the Public Health and Welfare Act, 42 U.S.C. § 6297: Effect on other law. Whether the content in this resource or a modification thereof is subject to preemption may depend on court decisions or whether a waiver has been issued by the US Department of Energy pursuant to 42 U.S.C. § 6297(d).

Recommended Motion I3.0:

[REDACTED]

ICC staff recommends moving this content to a resource with the below note cautioning about the risk of preemption.

ICC Council Policy-49 Note

In considering whether to adopt the content in this resource, jurisdictions in the United States should note that federal law might be found to preempt the provisions it prescribes. See the Public Health and Welfare Act, 42 U.S.C. § 6297: Effect on other law. Whether the content of this resource or a modification thereof is subject to preemption may depend on court decisions or whether a waiver has been issued by the US Department of Energy pursuant to 42 U.S.C. § 6297(d).

Recommended Motion II1.0:

[REDACTED]

[REDACTED] ICC staff [REDACTED] recommends keeping this

content in an Appendix without adding the exceptions requested by AHRI. ICC staff recognizes, however, that compliance options are limited using minimum efficiency equipment, and recommends including the below note to that effect with the Appendix. As the code will be amended through a continuous maintenance process, if the Committee is able to establish additional compliance options with minimum efficiency equipment, the Board may remove this note.

ICC Council Policy-49 Note

This voluntary appendix is intended for adopting authorities that wish to extend beyond the mandatory provisions of this code toward Zero Net Energy goals. For jurisdictions in the United States, compliance options appear to be available but may be limited if using only minimum efficiency mechanical and service water heating equipment. Adopting authorities may need to consider alternative means to expand methods for compliance under these conditions (see Section C104.1).

Recommended Motion II2.0:

[REDACTED]

ICC staff recommends moving this content to a resource with the below note cautioning about the risk of preemption.

ICC Council Policy-49 Note:

In considering whether to adopt the content in this resource, jurisdictions in the United States should note that federal law might be found to preempt the provisions it prescribes. See the Public Health and Welfare Act, 42 U.S.C. § 6297: Effect on other law. Whether the content of this resource or a modification thereof is subject to preemption may depend on court decisions or whether a waiver has been issued by the US Department of Energy pursuant to 42 U.S.C. § 6297(d).