

August 16, 2023

Washington State Building Codes Council
PO Box 41449, Olympia WA 98504-1449

Via email: sbcc@des.wa.gov
cc: stoyan.bumbalov@des.wa.gov

RE: Cascade Natural Gas Corporation
Letter Regarding Deferment of the 2021 Code Cycle

Honorable Members of the Washington State Building Code Council (SBCC),

Cascade Natural Gas Corporation (Cascade), is writing to request that the SBCC consider extending the deferment of the 2021 Washington State Building and Energy Codes (Codes) from October 29, 2023 to July 1, 2024. The extension is necessary for the effective and efficient implementation of the forthcoming Codes.

On May 24, 2023, the SBCC voted to delay the effective date of the Codes for 120-days, placing the new effective date for all building and energy codes as October 29, 2023. This action was taken along with the council initiating Expedited Rulemaking “...to address legal uncertainty stemming from the decision in *California Restaurant Association v. City of Berkeley* recently issued by the Ninth Circuit Court of Appeals.”

Cascade requests the SBCC consider the following:

The SBCC is unlikely to complete the amendatory, expedited rulemaking currently underway prior to the currently established effective date of October 29, 2023.

On July 18, 2023, Council Member Kjell Anderson, who serves as the Chair for both the MVE Committee and Energy Code TAGs, indicated a likelihood that the expedited rulemaking currently underway would not be completed prior to the current effective date of October 29, 2023.

“So, if we wanted to have a code go into effect before that 120-days, we would need to have the MVE meet on September 8th, the Council meet on September 15th, approve a CR 102, have that public process, have the Council meet again, and do a hearing in late October, and then finalize the code in late October. And then, even then, we might still need to delay the code by between 0 and you know, 30-days. Kind of best case scenario.”

As the Chair of the Energy Code TAGs and MVE Committee, Mr. Anderson is uniquely suited to provide comment regarding the schedule given his role in administering the process. Taking into consideration Mr. Anderson’s comments regarding the timeline for completion of the Expedited Rulemaking, it is likely the current schedule lacks sufficient time for a complete, thorough, and unrestricted process.

For effective and efficient implementation of the Codes, training will be required for local code officials, design professionals, and those contractors and industry professionals held responsible for adherence to the Codes.

While the SBCC is in the process of the expedited rulemaking, training and educational offerings, in particular those related to the energy codes, are largely suspended. This leaves users and practitioners without the necessary guidance, which is particularly concerning given the new rules will not be available for review prior to implementation date currently set by the council.

Under the typical rulemaking process, the Codes are largely finalized 6 to 7 months prior to the effective date of the Codes (i.e. ratified by SBCC mid-November and effective July 1). However, the current expedited rulemaking process appears as if it will only have days to spare or may even overrun the current effective date afforded by the initial 120-day delay. This does not provide adequate time for code professionals to review and become educated on the new codes or for builders and developers to incorporate the forthcoming Codes into project designs to be submitted on or after the October 29th implementation date.

The SBCC has the ability to act immediately and delay the implementation of the Codes.

While the SBCC initially believed a decision to delay the adopted rules was via an Emergency Rule limited to 120-days, SBCC staff has recently identified a “better way to delay the implementation” is “through filing a CR 103P”. Managing Director, Mr. Stoyan Bumbalov has declared the following. (See ECF No. 40 filed 6/22/23; Case 1:23-cv-03070-SAB)

This process is allowed by the Administrative Procedure Act and is a cleaner way to delay the implementation date because it will make the effective date of the rules more clear for stakeholders. Changes under a CR 103P show up on the legislative website while emergency rules do not. If it appears that rulemaking to amend the rules cannot be completed by October 29, 2023, the Council can file subsequent CR 103P forms to further delay the rules.

Pursuant to [RCW 19.27A.045](#) and [RCW 19.27A.025](#), the SBCC is obligated to have any decisions to amend the State Energy Codes made prior to December 1 of any year and any such amendments shall not take effect before the end of the regular legislative session in the next year.

Given the SBCC has undertaken the Expedited Rulemaking process and solicited code change proposals, it is evident that the SBCC intends to amend the currently adopted codes. The 2021 Washington State Energy Code Residential Provisions and 2021 Washington State Energy Code Commercial Provisions have each been filed and recorded in the State Register; see WSR 23-02-060 and WSR 22-14-091. It is therefore clear that any current effort to alter or change the energy codes via Expedited Rulemaking would amend the State Energy Codes. As specified in RCW 19.27A.045 and RCW 19.27A.025, any decision to amend the State Energy Codes shall not take effect before the end of the regular legislative session in the next year.

We look forward towards continuing to work with SBCC staff and council members in the current Expedited Rulemaking process, and we appreciate your attentiveness in responding to this request.

Thank you for your consideration.

Sincerely,

Ty Jennings, MCP CBO CFM
Building Codes Specialist
Cascade Natural Gas Corporation