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March 29, 2024

Stoyan Bumbalov, Managing Director
Washington State Building Code Council
1500 Jefferson Street SE
P.O. Box 41449
Olympia WA 98504

Re: Petition For Amendment of the 2021 Washington State Energy Code – Commercial

DELIVERED via sbcc@des.wa.gov and stoyan.bumbalov@des.wa.gov

Mr. Bumbalov,

On behalf of the Northwest Gas Association and its Washington members, Puget Sound Energy, Avista Utilities, Cascade Natural Gas and NW Natural, I respectfully request that the Council consider the attached petition concerning Section C403.1.4.

Please acknowledge your receipt of my request and confirm its disposition. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan S. Kirschner".

DAN S. KIRSCHNER
Executive Director

Cc: Krista Braaksma via krista.braaksma@des.wa.gov

The following is supplemental to the attached form "Petition For Adoption, Amendment, or Repeal of a State Administrative Rule".

Relevant Statute (emphasis added):

RCW 34.05.340 Variance between proposed and final rule.

(1) Unless it complies with subsection (3) of this section, an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding.

(3) If the agency, without filing a supplemental notice under subsection (1) of this section, adopts a rule that varies in content from the proposed rule, the general subject matter of the adopted rule must remain the same as the proposed rule . . . Within sixty days of publication of the adopted rule in the state register, any interested person may petition the agency to amend any portion of the adopted rule that is substantially different from the proposed rule. The petition shall briefly demonstrate how the adopted rule is substantially different from the proposed rule and shall contain the text of the petitioner's proposed amendment. For purposes of the petition, an adopted rule is substantially different if the issues determined in the adopted rule differ from the issues determined in the proposed rule or the anticipated effects of the adopted rule differ from those of the proposed rule.

Key question raised by this statute:

Did the State Building Code Council (SBCC) "adopt a rule that is substantially different from the rule proposed"; that is, do "the anticipated effects of the adopted rule differ from those of the proposed rule"?

Answer: Yes

Reasoning:

In section C403.1.4 of the 2021 commercial energy code (WAC 51-11C), the proposed rule (CR-102, July 2022) allowed for 'hybrid' space heating systems – those that include a heat pump for primary heating coupled with combustion-based supplemental heating. Hybrid systems allow for design and operational flexibility and the potential for lower construction and operating costs, particularly in cold climates such as eastern Washington. Hybrid systems are permitted for *service* water heating in the WAC 51-11C for these very reasons. Hybrid systems are also permitted in the Washington Residential Energy Code for *space* heating.

By changing proposed code language at the December 12, 2023 SBCC meeting, the Council limited the choice of supplemental heating sources to electric resistance for air-to-air heat pumps and ground source heat pumps in commercial buildings, eliminating the possibility of hybrid space heating systems. This elimination of system choice is a substantial change because builders and building owners are disallowed an entire class of heating sources – an anticipated effect that differs from the proposed rule.

Also, the proposed rule language was the product of many hours of volunteer labor by the Commercial Energy Code Technical Advisory Group (TAG) that approved said language. Further, the Mechanical, Ventilation and Energy Codes Committee reviewed and approved the proposed language from the TAG and recommend adoption by the Council.

For these reasons, the petitioner requests that the 2021 WAC 51-11C be amended, reverting to proposed rule language in the CR102, by striking "electric resistance" from Section C403.1.4 as indicated below:

C403.1.4 Use of electric resistance and fossil fuel-fired HVAC heating equipment.

EXCEPTIONS:

5. **Air-to-air heat pumps.** Buildings are permitted to utilize ~~electric resistance~~ supplemental heating sources for air-to-air heat pumps that meet all of the following conditions:

7. **Ground source heat pumps.** Buildings are permitted to utilize ~~electric resistance~~ supplemental heating sources for heat pump heating for hydronic heating systems with ground source heat pump equipment that meets all of the following conditions:

Thank you for your consideration.



PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

In accordance with [RCW 34.05.330](#), the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at <http://apps.leg.wa.gov/wac/default.aspx?cite=82-05>.

CONTACT INFORMATION *(please type or print)*

Petitioner's Name _____

Name of Organization _____

Mailing Address _____

City _____ State _____ Zip Code _____

Telephone _____ Email _____

COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: <http://www.leg.wa.gov/CodeReviser/Documents/RClist.htm>.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: _____

1. NEW RULE - I am requesting the agency to adopt a new rule.

The subject (or purpose) of this rule is: _____

The rule is needed because: _____

The new rule would affect the following people or groups: _____

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: _____

I am requesting the following change: _____

This change is needed because: _____

The effect of this rule change will be: _____

The rule is not clearly or simply stated: _____

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: _____

(Check one or more boxes)

It does not do what it was intended to do.

It is no longer needed because: _____

It imposes unreasonable costs: _____

The agency has no authority to make this rule: _____

It is applied differently to public and private parties: _____

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

Other (please explain): _____