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September 20, 2024

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

RE: WAC 51-11C-40314 Use of Electric Resistance and Fossil Fuel-Fired HVAC Heating Equipment

Members of the Washington State Building Code Council:

Avista Corporation, dba Avista Utilities (Avista), appreciates the opportunity to comment on the CR-102 draft changes to the 2021 Washington State Energy Code Commercial Provisions, specifically WAC 51-11C-40314 regarding the use of electric resistance and fossil fuel-fired HVAC heating equipment.

First, it is highly unusual to comment on rules that have been in effect since March 15, 2024. For public participation, quality public policy, and clear enforcement, it is crucial to follow the Administrative Procedures Act (APA) and its processes for good policy and governance. Opening a new CR-102 and comment period months after the rules have taken effect is confusing and troublesome for those tasked with designing, building, and enforcing the code. In general, we ask the SBCC to follow the APA to avoid possible future legal uncertainties.

Section C403.1.4 exceptions 5 and 7 of the 2021 commercial energy code (WAC 51-11C) recognizes the need and allows for the use of supplemental heat in cold temperatures. For compliance with EPCA, the "electric resistance" limitation within these exceptions was stricken in the October 18, 2023, CR-102 proposed rule (WSR 23-21-106). This original proposed language allowed the choice of any EPCA covered appliance for supplemental heat.

However, at the November 28, 2023 SBCC meeting, the Council unexpectedly, without public comment or a cost benefit analysis, changed the proposed code language, limiting supplemental heating sources to electric resistance only. This change eliminates the possibility of using EPCA covered appliances for supplemental heating. Relying solely on electric resistance heat increases the carbon emissions associated with heating a building during cold temperatures 300%. Data supporting this noted 300% increase in carbon emissions was presented and discussed at length throughout the Technical Advisory Group's work. The fundamental principle behind improving energy efficiency in buildings is to reduce greenhouse gasses; however, this change to supplemental heat has increased carbon emissions.

Also, relying solely upon electric resistive for supplemental also greatly increases construction and operating costs, particularly in cold climates such as eastern Washington. The elimination of choice for EPCA covered appliance is a substantial change because builders and building owners are disallowed an entire class of heating sources—an anticipated and real effect that differs from the proposed rule. SBCC has never performed a cost benefit analysis to measure the cost associated with limiting supplemental heating to electric resistive. As the change occurred unexpectantly, without notice at the November 28, 2023, SBCC meeting, no analysis was available for this change as discussed at length during the meeting. Again, the cost benefit analysis provided for this most recent CR-102 filing (WSR 24-16-146), fails to quantify the cost of limiting supplemental heating to electric resistive.

Additionally, 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. Furthermore, the Mechanical, Ventilation, and Energy Codes Committee reviewed and approved the proposed language from the TAG and recommended adoption by the Council.

For these reasons, we request that the 2021 WAC 51-11C be amended with the changes noted in Option 2, reverting to the proposed rule language in the October 18, 2023 CR-102 filing (WSR 23-21-106), by striking "electric resistance" from Section C403.1.4 as indicated below:

WAC 51-11C-40314 Section C403.1.4—HVAC heating equipment.
C403.1.4 Use of electric resistance and fossil fuel-fired HVAC heating equipment.

EXCEPTIONS:

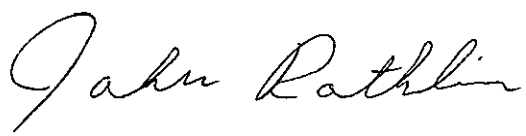
5. **Air-to-air heat pumps.** Buildings are permitted to utilize ((~~electric resistance~~)) supplemental heating for air-to-air heat pumps that meet all of the following conditions:

7. **Ground source heat pumps.** Buildings are permitted to utilize ((~~electric resistance~~)) supplemental heating 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.

Avista appreciates the opportunity to submit these comments for the record. We request the Council consider the proposed changes attached to this letter to ensure the code meets statutory requirements for adoption—both in substance and administrative process—and comports with the federal preemption provisions of the Energy Policy and Conservation Act (EPCA).

Sincerely,



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