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# Preliminary Cost Benefit Analysis for Northwest Gas Association Petition to revise Section C403.1.4 in the 2021 Washington State Energy Code, Commercial Provisions

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## I. Code Adoption and Significant legislative Rules

### 1. Introduction

The Council developed modifications to the 2021 commercial energy code 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. As a part of these changes, the Council considered changes to expand the supplemental heating sources for air-to air heat pumps and ground source heat pumps from electric resistance to all fuel types, but those changes were ultimately not adopted. On March 29, 2024, the Council received a petition from the Northwest Gas Association requesting the adoption of the originally considered changes to Section C403.1.4 for air-to-air and ground source heat pumps. The Council agreed to consider the proposal.

### 2. Amendment of 2021 Washington State Energy Code, Commercial Provisions.

The Washington State Building Code Council (SBCC) filed the Preproposal Statement of Inquiry to initiate the consideration of the proposal from the Northwest Gas Association on May 13, 2024, under WSR 24-11-063. On June 21, 2024, the Council voted to file the Proposed Rule Making that included options for retaining the language as previously adopted for the 2021 Washington State Energy Code, Commercial Provisions and the language proposed in the proponents' petition. Option 1 retains the language as previously adopted while Option 2 expands the supplemental heating options for the two types of heat pumps from electric resistance to all heating types.

## II. Code Proposals.

### 1. Summary of Economic Impact.

The proposal does not impose additional costs. Option 1 makes no changes to the existing rule and therefore has no impact. Option 2 provides additional options that may increase or decrease the cost of the supplemental heating system depending on the type provided, but does not require a specific system to be used. However, Option 2 would allow those systems utilizing fossil fuel supplemental heating for air-to-air and ground source heat pumps to bypass the fossil fuel compliance path in Section C401.3, thus not incurring the requirement for additional efficiency credits to be earned.

**Review Process:** This proposal did not go through the standard technical advisory group (TAG) review process, as it was a singular proposal that the Council agreed to forward into rule making. A similar proposal was part of an earlier rule making process and was reviewed by the TAG at that time and forwarded as part of the previously proposed rule making.

**Probable Benefits vs Probable Costs:** The proponents state that the current rule limits the choice of supplemental heating sources for air-to-air heat pumps and ground source heat pumps in commercial buildings, eliminating the possibility of hybrid space heating systems, disallowing an entire class of heating sources. Option 2 of this proposal introduces the possibility of providing those hybrid systems but does not require their use. This would allow hybrid systems to bypass the Section C401.3 pathway for fossil fuel appliance use and reduce the number of additional efficiency credits required.

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**(1)(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements RCW 19.27A.020 - State energy code—Adoption by state building code council—Preemption of local residential energy codes.**

(1) The state building code council in the department of enterprise services shall adopt rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to adopt rules to be known as the Washington state energy code. The Washington state energy code shall be designed to:

(a) Construct increasingly energy efficient homes and buildings that help achieve the broader goal of building zero fossil-fuel greenhouse gas emission homes and buildings by the year 2031;

(b) Require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework; and

(c) Allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

*This rule adopts standards for the Washington State Energy Code, Commercial provisions, that are in line with federal law, that remain efficient, allow flexibility and help move toward the broader goal of building zero fossil-fuel greenhouse gas emission homes by 2031.*

**(1)(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule:**

*The Council is required to adopt and maintain the state building code, as provided in chapters 19.27, 19.27A, and 70.92 RCW, and the state legislature. The primary objective of the Council is to encourage consistency in the building code throughout the state of Washington and to maintain the building code consistent with the state's interest as provided in RCW 19.27.020. The Council is considering this rule in response to a petition for amendment of a state administrative rule. If Option 2 is not adopted, the current rule will remain in effect, and the supplemental heat source for air-to-air and ground source heat pumps will remain limited to electric resistance heating unless the fossil fuel pathway under Section C401.3 is used.*

**(1)(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented:**

*The proposed amendments in Option 2 increase the flexibility of the code while maintaining the progress gained towards achieving the goals in RCW 19.27A.020(2) and RCW 19.27A.160.*

**(1)(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection:**

*The alternative to Option 2 would be to retain the rule as currently adopted. This would require that hybrid supplemental systems for air-to-air and ground source heat pumps would need to demonstrate compliance through Section C401.3 for fossil fuel appliances.*

**(1)(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law:**

*The primary objective of the Council is to encourage consistency of code requirements throughout the state, and to maintain the energy code consistent with the state's interest. The rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.*

**(1)(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law:**

*The proposed amendments 2021 Washington State Energy Code, Commercial Provisions, do not impose more stringent performance requirements on private entities than on public entities.*

**(1)(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:**

- This does not differ from any federal regulations or statute applicable to the same activity.
- (1)(i) A state statute explicitly allows the agency to differ from federal standards; or
- (1)(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and
- (1)(iii) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.