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# 2019 Group B – Appeals STAFF ANALYSIS MEMO

## 2019 – 3

August 31, 2020

**STAFF ANALYSIS MEMO TO APPEALS BOARD**  
**ON SCOPE AND INTENT APPEALS ON 2019 GROUP B CODE CHANGES**  
**August 31, 2020**

To: The Appeals Board regarding 2019 Group B Appeals

From: Mike Pfeiffer, P.E., Senior Vice President of Technical Services

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Four entities have appealed certain proposed changes to the 2021 International Energy Conservation Code (IECC) and 2021 International Residential Code (IRC) on the grounds that the proposals in question are outside the scope of the IECC and IRC (Chapter 11). The code changes in question were approved by the 2019 Group B final action Online Governmental Consensus Vote in December 2019.

The American Gas Association (AGA) and the American Public Gas Association (APGA) have jointly appealed **RE147-19** (requiring electric readiness) and **CE217-19, Parts I and II** (requiring electric vehicle supply equipment).

The National Association of Home Builders (NAHB) and the Leading Builders of America have filed separate appeals on both code changes as well, noting the proposals are outside the scope of the IECC and IRC.

**THE APPEALS**

**I. AGA and APGA Appeal**

The essence of these entities' appeal on the issue of scope is that the code change proposals do not meet the "intent" statements of the relevant coverages of the IECC and the IRC. With respect to RE147-19, these entities state:

"This proposal would impose residential costs of construction upon consumers to comply with requirements for "electrification-ready" electrical wiring and components without justifying its requirements on energy efficiency, conservation, or savings. The construction cost analysis approved by ICC staff in publication of the proposal identifies increases in costs of construction that the proposal would cause, but neither the proponent nor ICC staff provide justification or commentary on energy savings. As such, the proposal does not meet the "Intent" statement of the residential building coverage of the IECC:

**R101.3 Intent.** This code shall regulate the design and construction of buildings for the effective use and conservation of energy over the useful life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective. This code is not intended to abridge safety, health or environmental requirements contained in other applicable codes or ordinances."

Instead, the proponent offers speculative societal benefits of the proposed requirements without the essential justification on energy savings."

With respect to CE217, Parts I and II, these entities state:

"This proposal would impose costs of construction in commercial and residential buildings by requiring electric vehicle (EV) equipment, EV "capable spaces," and EV "ready spaces" for reasons not relevant to building energy efficiency nor justified on the basis on building energy efficiency. The construction cost analysis approved by ICC staff and included with the publication of the proposal identifies increases in costs of construction that the proposal would cause, but neither the proponent nor ICC staff provide justification or commentary on energy savings to the building. As

such, the proposal does not meet the “Intent” statement of the commercial building coverage of the IECC:

**C101.3 Intent.** This code shall regulate the design and construction of buildings for the effective use and conservation of energy over the useful life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective. This code is not intended to abridge safety, health or environmental requirements contained in other applicable codes or ordinances.”

Instead, the proponent in this case, similar to that of RE147-19, offers speculative societal benefits of the proposed requirements unrelated to building energy efficiency and without the essential justification of energy savings.”

## II. NAHB Appeal

NAHB’s appeal strikes a similar chord:

“Proposals RE147 and CE217 Parts I and II are both outside the scope and intent of the IECC (section R101.3 and C101.3). These proposals require the addition of electric vehicle charging outlets (CE217 Parts I and II) and the installation of electric outlets where gas appliances are installed that can be used for future electric appliance replacement (RE147). Neither proposal impacts the “effective use and conservation of energy” outlined in the IECC.

Section R101.3 Intent of the IECC states, “This code shall regulate the design and construction of buildings for the **effective use and conservation of energy** over the useful life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective.”

Contrary to the IECC’s directive, these proposals are requirements for electric wiring and they do not contribute to effective use or conservation of energy....”

NAHB further notes that any such requirements should be in the electrical section of the IRC or in the National Electrical Code.

## III. LBA Appeal

LBA’s appeal merely states that CE217 and RE147 are “completely beyond the scope of the IECC.”

### **RELEVANT COUNCIL POLICIES**

Council Policy CP1-03 (revised 7/27/18) sets forth the procedures for appeals of “any action or inaction,” including matters related to code development. For purposes of the appeals at issue, two sections of this policy are of particular relevance.

- Section 6.3.7 provides:  
Review by the Appeals Board shall be limited to matters of process and procedure. The Board of Appeals shall not render decisions on the relative merits of technical matters.
- Section 6.3.8 provides:  
In order to sustain the appeal, or any part thereof, the Appeals Board must find that there was a material and significant irregularity of process or procedure.

Council Policy CP28-05 (revised 1/22/19) sets forth the rules of procedures for the continued development and maintenance of the International Codes. For purposes of the appeals at issue, three sections of this policy are of particular relevance.

- Section 1.3 provides:  
The ICC Board of Directors shall determine the title and general purpose and scope of each Code published by the ICC.
- Section 3.3.5 provides:  
Each code change proposal shall include sufficient supporting information to indicate how the code change proposal is intended to affect the intent and application of the Code.
- Section 4.1 provides:  
Upon receipt in the Secretariats office, the code change proposals will be checked for compliance with these Rules of Procedure.

## **DISCUSSION AND CONCLUSION**

### I. Process

As stated above in CP1, the authority of the Appeals Board extends only to matters of “process or procedure.” The appellants in the present matter have identified an issue of process or procedure that warrants consideration by the Appeals Board.

For background, pursuant to CP28, the general purpose and scope of the I-Codes is determined by the ICC Board of Directors. Staff reviews code change proposals for several criteria, including “scope and intent”. When ICC staff is presented with a decision on scope and intent, it is often a matter of interpretation. Staff generally errs on the side of openness, allowing the proposal(s) to be considered in the process. This approach was taken relative to both RE147 and CE217.

### II. Scope and Intent of the energy provisions in the IECC and IRC

In the case of both RE147 and CE217, the stated objective of the code changes is to save energy. Section R101.3 - Intent of the IECC states, “This code shall regulate the design and construction of buildings for the effective use and conservation of energy over the useful life of each building.” Section N1101.2 of the IRC includes identical language.

In the case of both RE147 and CE217, a compelling argument can be made that adding mandatory *electric readiness* at the time of construction and facilitating future installation and use of *Electric Vehicle Supply Equipment* expands the scope of the IECC and IRC beyond efficient energy use as a direct function of the operation, use and occupancy of the building.

### III. Recommendation

The appellants in this case make a compelling case that the code changes in question are outside the current scope of the energy provisions of the IECC and IRC. Therefore, staff recommends that the Appeals Board sustain the appeals and recommends the following:

1. The ICC Board of Directors, in accordance with the provisions noted in Section 1.3 of CP28, determine the proposed code changes in question are not within the current “general purpose and scope” of the IECC and Chapter 11 of the IRC and the language be excluded from the 2021 Codes.
2. The ICC Board of Directors appoint a committee to investigate for future editions of the I-Codes:

- a. Should the language from RE147 and CE217 be forwarded to the ASHRAE 189.1 committee for consideration in the ASHRAE Standard 189.1 and ultimately in the IgCC?
- b. Should the scope of the IECC be expanded?
- c. Should the proposal content be placed in a non-mandatory context in a document such as an ICC Guideline or Appendix to an I-Code?