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WPGA Comments on 2025 Energy Code Rulemaking

Please see attached letter for comments.

Additional submitted attachment is included below.



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May 13, 2024

California Energy Commission
715 P Street
Sacramento, CA 95814
VIA ONLINE SUBMISSION

RE: 2025 Building Code Standards

The Western Propane Gas Association (WPGA) appreciates this opportunity to comment on the California Energy Commission's proposed changes for the 2025 Building Energy Efficiency Standards. WPGA understands the complex needs to reduce greenhouse gas emissions while simultaneously managing energy system stability without negatively affecting the cost of housing in California. With this context in mind, WPGA submits the following comments.

PROPOSED REVISIONS IMPERIL RURAL COMMUNITY ENERGY RESILIENCE

Overemphasizing electrification at the cost of other fuel types runs three substantial risks to homeowners and ratepayers in California.

First, California's electrical grid has been seen to operate at and even beyond its capacity causing economic harm measured in the billions of dollars, both in terms of Public Safety Power Shutoffs (PSPS) and in terms of delayed construction projects across the state.¹

Second, a transition to a generally new building energy technology, electric heat pump water heaters, in particular, bear substantial risk to California's housing market. Most contractors in the state are unfamiliar with the technology, and those that are familiar often see it as underperforming and needlessly expensive. Additionally, a forced transition to a new technology in a constrained timeframe bears significant supply chain risks.

Lastly, California has one of the most diverse geographies of any state with sixteen independent climate zones. The energy needs of California communities vary as much as those climates do. While heat pump systems may prove sufficient and cost effective in many of the milder and hotter climates in the state; in our vast north coasts, foothills, and mountain communities, there are much higher heating needs that are more effectively met with combustion-based heating systems, like propane space heaters.

The Energy Commission's Lifecycle System Cost metric does not directly reflect how these costs will affect individual homes, with many at risk of facing increased energy costs in a state with a massive housing affordability crisis and an unhoused population that makes up more than 25% of the national total.² Cold-weather electric heating equipment faces significantly higher energy demands per joule of energy than their gaseous fuel equivalents. Any measure that may

¹ Wolfram, Catherine. "Measuring the Economic Costs of the PG&E Outages", *Energy Institute Blog*, UC Berkeley, October 14, 2019, <https://energyathaas.wordpress.com/2019/10/14/measuring-the-economic-costs-of-the-pge-outages/>

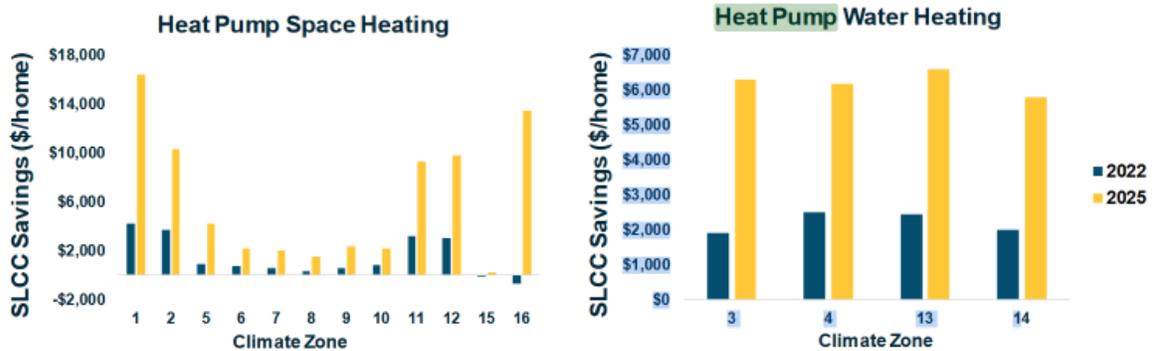
² <https://www.usnews.com/news/best-states/articles/states-with-the-most-homeless-people>

risk furthering this crisis deserves only the utmost of scrutiny. The figure below shows the impact of the change in the CEC's energy accounting from the 2022 Code to the 2025 Code.



Single-Family Heat Pumps

- Switching from natural gas space heating baseline to electric heat pump generates SLCC savings in all climate zones, ranging from **\$200-\$16,400** per home (left graph)
- Switching from natural gas water heating baseline to electric heat pump generates SLCC savings in all climate zones, ranging from **\$5,800-\$6,600** per home (right graph)

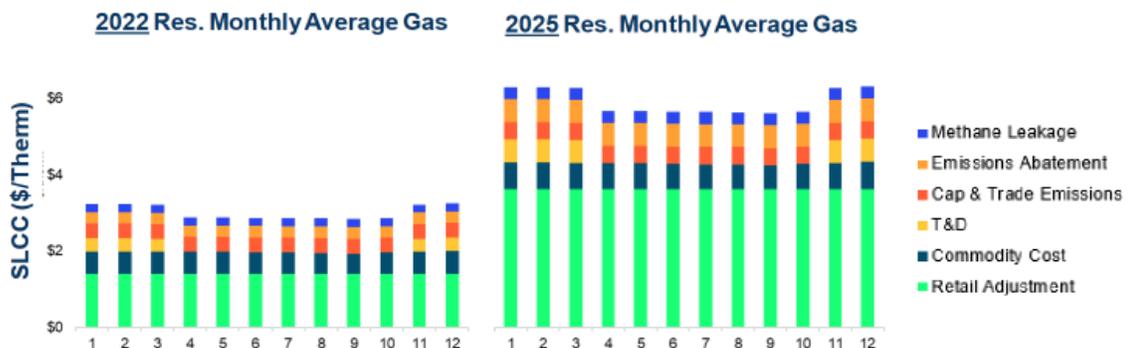


This analysis begins with the CEC's choice to use a high electrification adoption model as their baseline, causing a presumed large scale cost increase for natural gas as seen in the figure below.



Residential Gas

Residential gas factors significantly higher than 2022 cycle, mainly due to increases in retail adjustment from high electrification (**80% increase** in residential gas factors)



This single assumption causes an 80% retail price increase for natural gas. This assumption ignores propane and the fact that propane does not suffer cost increases due to aging and abandoned infrastructure, and does not account for the proportionately higher use of propane in rural and heating dominated climate zones. This assumption is also highly vulnerable to the fact that energy prices are notoriously difficult to forecast.

EPCA AND CURRENT CASE LAW PREEMPTS THE PROPOSED REVISIONS

The federal Energy Policy and Conservation Act (“EPCA”) expressly preempts the proposed revisions because they constitute regulations concerning the energy use of a covered product under 42 U.S.C § 6297(c), and do not meet all seven requirements a building code must meet in order to avoid preemption under EPCA in 42 U.S.C § 6297(f)(3).

Furthermore, in *California Restaurant Ass’n v. City of Berkeley*, 89 F.4th 1094 (9th Cir. Jan. 2, 2024), the Ninth Circuit recently held that the City of Berkeley’s ban on natural gas infrastructure in new buildings was preempted by EPCA. As the Ninth Circuit explained, EPCA “extends to regulations that address the products themselves and building codes that concern their use” of fuels and that EPCA ensures that “States and localities could not prevent consumers from using covered products in their homes, kitchens, and business.” Accordingly, if enacted as written, the proposed revisions will be legally invalid.

This conclusion is further supported by the holding in *AHRI v. Albuquerque*, 2008 WL 5586316 (D. NM 2008). In *Albuquerque*, the court found the City’s argument unavailing and held that revisions to a prescriptive path to compliance was a regulation subject to EPCA’s preemption provision, regardless of the availability of a performance path to compliance. In reaching this holding, the court stated, “[t]he City has not persuaded the Court that a local law is not preempted when it presents regulated parties with viable, non-preempted options. (See Mem. Op. and Order at 14, Doc. No. 61, filed October 3, 2008, 2008 WL 5586316 (“the Court can find no support for the novel proposition that the inclusion of one or more alternatives for compliance in a regulation keeps each of the alternatives from being considered a regulation”).” Ultimately, the Court concluded “that the prescriptive provisions of Volume I requiring the use of heating, ventilation, or air conditioning products or water heaters with energy efficiency standards more stringent than federal standards are regulations that concern the energy efficiency of covered products and, therefore, are preempted as a matter of law.”

As in *Albuquerque*, the proposed revisions revise the prescriptive path to compliance under the Energy Code. The *Albuquerque* court found that such a regulation is subject to EPCA’s preemption provision, regardless of the existence of a performance path to compliance. Thus, the fact that an alternative performance path under the proposed revisions exists, will not save either the prescription or performance regulations from EPCA preemption.

The CEC claims that EPCA is not a problem, based entirely on its reading of EPCA § 6297(f)(3)(A) that permits a builder to meet their energy consumption or conservation objective “by selecting items whose combined energy efficiencies meet the objective.” However, the reality of the code is such that it would in practice effectively prevent certain fuels from being used across all climate zones with significant impediments to access and sets up a *de facto* ban on the use of certain types of energy across the entire state. Moreover, the CEC ignores that the building code exception has seven requirements, not just one, and it doesn’t attempt to explain how its proposed revisions satisfy those requirements, which generally require even-handed treatment, or are otherwise in accord with EPCA.

WPGA appreciates the opportunity to submit these comments and to continue to support the state in meeting its housing, energy, and climate change goals sustainably. If the Commission has any questions regarding this submission, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Krysta Wanner". The signature is written in a cursive, flowing style.

Krysta Wanner
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