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90.1 Standing Standards Project Committee

c/o ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.)

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November 8, 2024

Re: Proposed Addendum ap to ANSI/ASHRAE/IES Standard 90.1-2022, Energy Standard for Sites and Buildings Except Low-Rise Residential Buildings (This addendum modifies the scope of Standard 90.1 to cover the installation of electric vehicle service equipment (EVSE)).

ASHRAE 90.1 Standing Standards Project Committee:

These comments are filed by the American Gas Association (“AGA”) in response to the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (“ASHRAE”) request for public comment on Addendum: BSR/ASHRAE/IES Addendum ap (“Addendum ap”) to ANSI/ASHRAE/IES Standard 90.1-2022, Energy Standard for Sites and Buildings Except Low-Rise Residential Buildings addressing electric vehicle service equipment (“EVSE”).

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 78 million residential, commercial, and industrial natural gas customers in the U.S., of which 95 percent – more than 74 million customers – receive their gas from AGA members. AGA advocates for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies,

Michael L. Murray *General Counsel*

and industry associates. Today, natural gas meets more than one-third of the United States' energy needs.¹

Addendum ap's proposed scope change to cover the installation of electric vehicle service equipment (EVSE) conflicts with the Purpose of ASHRAE 90.1 standard that is "To establish the minimum energy efficiency requirements of buildings other than low-rise residential buildings, and sites." Clearly, the installation of EVSE does not assist in establishing "minimum energy efficiency" requirements of buildings" and will only add cost to the buildings and additional electrical usage in the building.

Additionally, since the ASHRAE 90.1 committee uses economic analysis in its decision-making process and economics play an important role in establishing the requirements for a minimum national building energy efficiency standard, it would not be possible for conducting an economic analysis on a compliance the requirement to add EVSE since such a feature does nothing to improve the energy efficiency of the buildings covered by ASHRAE 90.1. These facts are enough proof that Addendum ap should not be included in the scope of ASHRAE 90.1.

As discussed in more detail below, AGA has grave concerns that Addendum ap contradicts ASHRAE 90.1's stated purpose of energy efficiency, violates the independent and unbiased requirements established for voluntary standard developers, is anticompetitive, and is preempted by federal and state laws.

Appendix A reflects AGA's recommended revisions to Addendum ap.

ASHRAE 90.1

The ASHRAE 90.1 is a building *energy code* that belongs to the larger family of *building codes*. Broadly, *building codes* protect public health, safety, and general welfare in the construction and occupancy of buildings. *Building codes*, among other topics, may address structure, parking and traffic, rules to minimize the risk

¹ For more information, please visit www.aga.org.

of fire, installation methodologies, and requirements for specific use.² An *energy code* is a type of *building code* that addresses all parts of the building that consume energy or contribute to the consumption of energy.³

The Energy Conservation and Production Act ("ECPA"), which directs the federal Department of Energy and the states to review ASHRAE 90.1, makes clear that the purpose of incorporating the standard into the statute is to provide for "voluntary performance standards for . . . buildings *which are designed to achieve the maximum practicable improvements in energy efficiency.*"⁴ ASHRAE 90.1's scope is thus limited, by statute, to promoting "improvements in energy efficiency."

Addendum ap has no relation to any objective, reasoned pursuit of building energy efficiency or energy savings contravening the originally stated scope, mission and objective of ASHRAE 90.1, as well as ECPA. Addressing EVSE provisions conflicts with the purposes of ECPA and ASHRAE 90.1 itself. The Addendum has no place in federal law as a part of a standard measured by whether it will "improve energy efficiency"⁵ of the built environment.

ASHRAE 90.1 should not be used as a vehicle to address EVSE provisions. If desired, that would need to be addressed by other standards and not included as a compliance requirement in the ASHRAE 90.1 standard.

AGA and its members are fully committed to reducing GHG emissions and decarbonization through smart innovation, new and modernized infrastructure, and advanced technologies that maintain reliable, resilient and affordable energy service choices for customers. Gas technology and gas infrastructure can help achieve meaningful and immediate progress toward a net-zero emissions future.

² Congressional Research Service, *Building Codes, Standards, and Regulations: Frequently Asked Questions* (Updated November 22, 2023).

³ Listoken, D, Hattis D, *Building Codes and Housing*, Cityscape: A Journal of Policy Development and Research, Vo. 8, No. 1 (2005) U.S. Dept. of Housing and Urban Development, Office of Policy Development and Research.

⁴ 42 U.S.C. § 6831(b)(2) (emphasis added).

⁵ 42 U.S.C. § 6833(b)(2)(A).

EVSE and Full Fuel Cycle Analysis

If a reasoned and objective connection to EVSE and building energy efficiency is established outside ASHRAE 90.1, the “EPA has determined that source energy is the most equitable unit of evaluation for comparing different buildings to each other. Source energy represents the total amount of raw fuel that is required to operate the building. It incorporates all transmission, delivery, and production losses. By taking all energy use into account, the score provides a complete assessment of energy efficiency in a building.”⁶

Full-fuel-cycle energy is the total energy consumed by an appliance, system, or building. It includes energy consumed in the extraction, processing, and transport of primary fuels such as coal, oil, natural gas; energy losses in thermal combustion in power-generation plants and the energy associated with electric generation from hydroelectric power plants, wind, solar, and other sources; and energy losses in transmission and distribution to the building site. Full-fuel-cycle, therefore, includes the total energy consumption and energy saving of end-use energy decisions.

In 2011, the DOE issued a “Statement of Policy for Adopting Full-Fuel-Cycle Analyses into Energy Conservation Standards Program,” which states that DOE will use full-fuel-cycle measures of energy use and emissions when evaluating energy conservation standards for appliances, following the recommendation of the National Academy of Sciences.⁷ By the same logic, full-fuel-cycle analysis should be applied to the EVSE resources. This approach aligns with the ASHRAE Board of Directors publicly stated goal that “all new and existing [buildings] must have *net zero GHG emissions across their whole life cycles*” by 2050.⁸

Decreasing only on-site conventional fuel-generated energy consumption of buildings would not necessarily increase the overall energy efficiency of the buildings and would not necessarily result in a reduction of GHG emissions.

⁶ See

https://www.energystar.gov/buildings/benchmark/understand_metrics/source_site_difference.

⁷ 76 Fed. Reg. 51281 (Aug. 18, 2011).

⁸ *ASHRAE Position Document on Building Decarbonization*, June 26, 2022, at 2 (emphasis added).

Exchanging conventional fuel-generated energy for reliance on the electric grid, which may still be generating energy with conventional fuels, does not necessarily lead to a reduction in GHG emissions.

ASHRAE Must Follow Due Process Principles Fundamental to Proper Model Consensus Code Development

ASHRAE is an American National Standards Institute (“ANSI”) accredited standard development organization (“SDO”) that develops technical and specialized standards. Under both ANSI requirements and federal guidelines, a voluntary consensus standard or code making body is defined by the following attributes:

- (i) “Openness
- (ii) Balance of interest
- (iii) Due process
- (iv) An appeals process
- (v) Consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties . . .”^{9,10}

These principles are the basic structural requirements for a standard or code to be incorporated into federal law.¹¹ They are also essential requirements for an ANSI certified SDO.¹²

⁹ Off. Mgt. Budget, Circular A-119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, 81 Fed. Reg. 4,673 (2016). *Available at* https://www.whitehouse.gov/wp-content/uploads/2020/07/revised_circular_a-119_as_of_1_22.pdf.

¹⁰ ANSI *Essential Requirements: Due Process Requirements for American National Standards* (January 2024). *Available at*: https://share.ansi.org/Shared%20Documents/About%20ANSI/Current_Versions_Proc_Docs_for_Website/ER_Pro_current.pdf.

¹¹ See 42 U.S.C. § 6832(14) (defining “voluntary building energy code,” including those developed by ASHRAE, to be those updated “through a consensus process among interested persons”).

¹² *Id at* FN 6, 7.

In conflict with OMB A-119's and the ANSI *Essential Requirements* "balance" test, ASHRAE has repeatedly departed from the ANSI SDO tenet that it be an unbiased administrator of code and standard development processes by taking policy positions unrelated to energy efficiency and unilaterally requiring that those policy positions be implemented through ASHRAE's administrator activities:

- "ASHRAE Applauds National Definition of Zero Emissions Building" (June 6, 2024)¹³
- "ASHRAE Press Releases Supporting ASHRAE's Reaffirmed Commitment to GHG Reduction within the Global Build Environment"¹⁴
 - "ASHRAE Expands Commitment to Reduce Greenhouse Gas Emissions by Releasing Building Performance Standards Guide and Redesigned Decarbonization Webpage" (Feb. 3, 2024)
 - "ASHRAE and Building Industry Organizations Assume Leadership Role in Global Decarbonization Efforts" (Nov. 8, 2022)
 - "ASHRAE and the International Code Council to Co-sponsor Whole Life Carbon Approach Standards (Aug. 30, 2022)
 - "2022 Building Performance Analysis Conference to Focus on Better Buildings, Less Carbon" (Jul. 15, 2022)
 - "ASHRAE Commits to Broad Building Decarbonization Initiatives in New Position Document" (July 12, 2022)

Each of these press releases demonstrate a clear bias against specific energy sources and a commitment to eliminate the use of natural gas in commercial buildings through ASHRAE 90.1.

Indeed, ASHRAE makes its intent to impose its policy preferences through Addendum aa clear in the Public Review Draft on which this letter comments. In the Foreword of that document, ASHRAE states:

In July 2022, ASHRAE issued a position document on building decarbonization and its role in mitigating the negative carbon impact of buildings on the environment.

¹³ Available at <https://www.ashrae.org/about/news/2024/ashrae-applauds-the-national-definition-of-a-zero-emissions-building>.

¹⁴ Available at <https://www.ashrae.org/about/ashrae-reaffirms-net-zero-energy-goals>.

ASHRAE states that by 2030, the global built environment must at least halve its 2015 greenhouse gas (GHG) emissions, with all new buildings being net-zero GHG emissions in operation. Increasing stringency and enforcement of energy codes are critical for decarbonization. This addendum supports and furthers ASHRAE goals.¹⁵

(Emphasis in original.)

ASHRAE must not be used as a conduit to affect policy change inconsistent with the energy saving goal of an *energy code* and must avoid becoming or even the appearance of being a biased forum.

The inclusion of Addendum ap is an obstacle to the accomplishment and execution of the original purpose of ASHRAE 90.1, in violation of A-119's principles, ANSI *Essential Requirements*, and the federal statutes by which ASHRAE 90.1 is incorporated into law.

Adhering to Due Process Code Development Principles Helps Avoid Improper Conduct by Market Participants

Codes and standards that fail to follow due process principles during their development result in an unbalanced voting process and lack of deliberation that cannot ensure transparency and openness. This, in turn, results in policy-driven guidance inconsistent with the stated scope and intent of the code or standard. It also may result in market restraints and economic burdens on underrepresented market participants and consumers.¹⁶

¹⁵ Available at: <https://osr.ashrae.org/Online-Comment-Database/ShowDoc2/Table/DocumentAttachments/FileName/4426-90.1-2022ap%20PPR1%20Draft.pdf/download/>

¹⁶ Non-governmental code development forums have a long history of being manipulated in pursuit of anticompetitive gains: See, *Allied Tube & Conduit Corporation v. Indian Head, Inc.*, 486 U.S. 492 (1988) (code committee members' efforts to influence the efforts of a private standard setting organization were determined to be anti-competitive); *American Soc'y of Mechanical Eng'rs, Inc. v. Hydrolevel Corp.*, 456 U.S. 556 (1982) (code development organization committee leadership advanced their economic interests by fraud and anti-competitive activity); *Radiant Burners, Inc. v. Peoples Gas Light and Coke Company*, 364 U.S. 656, (1961) (a standard that limits the marketability of a product in interstate commerce may be anticompetitive if not based on objective standards particularly when those standards are influenced by other market participants).

Codes, while only advisory, have a powerful economic influence, many of them being incorporated by reference in federal regulations and state and local laws. Codes, therefore, have immense power to do good but also have the power to frustrate competition in the marketplace.

The ASHRAE 90.1 is incorporated into federal law and may be adopted by states and municipalities as legislation. Adoption may also be automatic, e.g., incorporated by reference as amended. All parties are aware that influencing the substance of the code leads directly and predictably to market effects. Therefore, a proper antitrust audit and compliance program is essential.

The effect of the inclusion of EVSE provisions, without a clear definition of what these terms mean or their connection to energy savings, may have an anticompetitive effect. Without such inclusion, individual builders, utilities, and other stakeholders throughout the United States would make independent, market-driven decisions to determine a building's energy sources.

Promotion of specific fuel types, energy sources, or energy pathways within the ASHRAE 90.1 base code or appendices conflicts with ASHRAE 90.1's energy savings purposes, may be anticompetitive, and is adverse to federal policy which integrates the ASHRAE 90.1 as an *energy code*, which has the purpose of energy efficiency, into the federal regulatory framework to conserve energy.

Codes and standards-making activities can facilitate commerce and increase efficiency by increasing consumer information. However, those activities also can deprive consumers of the opportunity to make independent market decisions and inflict serious injury on competitors.

Addendum ap Will Result in Code Provisions in Violation of State Energy Choice Legislation

As noted above, inclusion of EVSE provisions in the purpose and scope of ASHRAE 90.1 is inconsistent with ASHRAE's responsibilities as an ANSI-accredited SDO, potentially anticompetitive, and defeats substantive policies at the federal level which are indispensable to well-functioning energy markets, lowering greenhouse gas emissions, and addressing climate change. It also is pre-

empted by state legislation promoting energy choice and prohibiting discrimination against energy sources.

Twenty-six states have passed legislation to protect the right of consumers to receive energy choice.¹⁷ These laws are expressed in variety of ways:

- Ensuring access to utility services,
- Establishing a right to energy access,
- Prohibiting discrimination based on energy source, and/or

¹⁷ [Ala. Act 2021-336](#), H.B. 446, Reg. Sess. (2021); [Ariz. Rev. Stat. Ch. 3](#), H.B. 2686, 54th Leg., 2d Reg. Sess. (2020); [Ark. Act 308](#), S.B. 137, 93rd Gen. Assemb., Reg. Sess. (2021); [Fla. Stat. Ch. 2021-150](#), H.B. 919, 123rd Leg., Reg. Sess. (2021); [Ga. Act 254](#), H.B. 150, 156th Gen. Assemb., Reg. Sess. (2021); [Idaho Sess. Laws ch. 55](#), H.B. 106, 67th Leg., Reg. Sess. (2023); [Ind. Pub. L. No. 180-2021](#), H.E.A. 1191, 122nd Gen. Assemb., 1st Reg. Sess. (2021); [Iowa H.F. 555](#), 89th Gen. Assemb., Reg. Sess. (2021); [Ky. Acts ch. 120](#), H.B. 207, 2021 Reg. Sess.; [Kan. Stat. Ann. ch. 1092](#), S.B. 24, 2021 Reg. Sess.; [La. Act No. 46](#), S.B. 492, 2020 Reg. Sess.; [Miss. Laws Ch. 345](#), H.B. 632, 2021 Reg. Sess.; [Mo. H.B. 488](#), 101st Gen. Assemb., 1st Reg. Sess. (2021); [Mont. Code Ann. § 7-1-111](#), S.B. 208, 68th Leg., Reg. Sess. (2023); [Neb. Leg. L.B. 867](#), 108th Leg., 2d Sess. (2024); [N.H. Laws Ch. 224](#), S.B. 86-FN, 2021 Reg. Sess.; [N.C. Sess. Laws 2023-58](#), H.B. 130, Gen. Assemb., Reg. Sess. (2023); [N.D. Cent. Code Ch. 11-10, H.B. 1234](#), 68th Leg. Assemb., Reg. Sess. (2023); [Ohio Rev. Code Ann. §§ 4933.40-4933.42](#), Sub. H.B. 201, 134th Gen. Assemb., Reg. Sess. (2021); [Okla. Sess. Laws Ch. 309](#), H.B. 3619 (2020); [Pa. S.B. 143](#), 2023-2024 Reg. Sess., Printer's No. 388; [S.D. Codified Laws Ch. 6-1](#), S.B. 174, 98th Leg. Sess. (2023); [Tenn. Pub. Acts Ch. 591](#), H.B. 1838, 111th Gen. Assemb., Reg. Sess. (2020); [Tex. H.B. 17](#), 87th Leg., R.S., ch. 594, § 1, 2021 Tex. Gen. Laws 594; [Utah Laws Ch. 15](#), H.B. 17. (2021); [W. Va. Code Ch. 75](#), H.B. 2842, Reg. Sess. (2021); [Wyo. Sess. Laws ch. 70](#), S.F. 152. (2021).

- Prohibiting limits on the sale, distribution of, or access to natural gas.

States that have passed these energy choice statutes or similar legislation include: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming.

These pieces of legislation would limit, if not eliminate, the ability of these states or municipalities within them to adopt ASHRAE 90.1 with the proposed Addendum. For example, Texas's law, H.B. 17, prohibits "banning, limiting, restricting, [or] discriminating against" types or sources of energy.¹⁸ In 2023, in part to avoid conflicts with H.B. 17, 82% of voters in El Paso, Texas rejected a measure that would have set ambitious "renewable energy goals" that aimed to exclude access to certain energy sources and left natural gas and other fuels behind.¹⁹ Like those in El Paso, residents and policy makers in the twenty-six states listed above will not be able to reconcile a building code that indirectly restricts natural gas use with a statute that mandates access to that resource.

Moreover, a national consensus code developed under the due process principles noted above cannot be either reasonable or consensus based if it conflicts with legislation and the express public policy of twenty-six of the fifty states.

In addition, Addendum ap would impose new unnecessary costs on builders and consumers by including a preference for electric transportation.

Conclusion

AGA respectfully requests that the ASHRAE 90.1 Standing Standards Project Committee consider these comments and implement Addendum ap as recommended in Appendix A to these comments.

¹⁸ Tex. Util. Code § 181.903(b) (effective May 18, 2021).

¹⁹ Diego Mendoza-Moyers, EL PASO MATTERS, *El Paso Voters Soundly Reject Proposition K Climate Charter*, May 6, 2023, <https://elpasomatters.org/2023/05/06/proposition-k-election-results-el-paso-climate-charter-may-6/>.

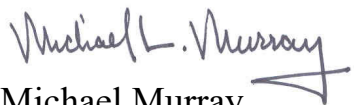
AGA also requests that the ASHRAE respond to these comments in writing and provide a reasoned basis for its determination that Addendum ap has a direct tie to building energy savings.

Further, AGA requests that the ASHRAE Board immediately implement a written code development procedural system consistent with due process requirements and that help ensure that the process itself does not become suborned by market interested parties seeking to reach improper ends that may be both anticompetitive and in violation of federal and state laws. This would include a robust antitrust compliance program and a conflict of interest disclosure policy for the ASHRAE Board and ASHRAE 90.1 Standing Standard Project Committee members.

AGA is ready to present additional support for these comments upon request.

Dated: November 8, 2024, at Washington, District of Columbia.

Respectfully submitted,



Michael Murray
General Counsel
American Gas Association

Appendix A – AGA Proposed Edits to Addendum ap to 90.1-2022

1. PURPOSE

- 1.1 To establish the minimum *energy efficiency* requirements of *buildings* other than *low-rise residential buildings*, and *sites* for
- a. design, *construction*, and a plan for operation and maintenance; and
 - b. utilization of *on-site renewable energy resources* resources-

2. SCOPE

2.2 This standard provides

- a. minimum *energy-efficient* requirements for the design and *construction*, and a plan for operation and maintenance of,
 1. new buildings and their systems,
 2. new portions of buildings and their systems,
 3. new systems and equipment specifically identified in this standard that are part of a site,
 4. new systems and equipment in existing buildings, and
 5. new equipment or building systems specifically identified in this standard that are part of process applications.
- b. criteria for controlling systems in the building or on the site that modify energy usage based on communications with energy suppliers to facilitate the use of low-emissions energy sources; and
- ~~c. criteria for energy transfer infrastructure to support transportation;~~
- ~~and~~
- d. criteria for determining compliance with these requirements.

***Proposed deletions to Addendum aa have a double strike through the text; proposed additions are in bold.**