

MAY 2024

VOL. 24-5

PRATT'S

ENERGY LAW

REPORT



LexisNexis

EDITOR'S NOTE: THE NATURAL GAS DEBATE

Victoria Prussen Spears

IT'S A GAS! FEDERAL AND STATE DEVELOPMENTS CONTINUE TO LIGHT UP THE NATURAL GAS DEBATE

Benjamin A. Mayer, David L. Wochner and
Derek B. Kalbfleisch

FUTURE UNCERTAIN FOR CALIFORNIA CLIMATE DISCLOSURE LAWS SET TO TAKE EFFECT IN TWO YEARS

Jurgita Ashley, Heidi B. (Goldstein) Friedman and
Tanya C. Nesbitt

U.S. ENVIRONMENTAL PROTECTION AGENCY PROPOSES RULES TO IMPLEMENT METHANE EMISSIONS FEE FOR OIL AND NATURAL GAS SOURCES

Samuel B. Boxerman, Timothy K. Webster,
Brittany A. Bolen and Jim Wedeking

ELECTRIC VEHICLE TAX CREDITS: AN UPDATE

Chris DiAngelo, Mitchell A. Fagen,
Brandon D. Hadley, Anna-Liza Harris,
John P. Keiserman, Richard Nguyen-Le,
Howard Schickler and Joseph Topolski

EUROPEAN UNION LEGISLATORS APPROVE ELECTRICITY MARKET REFORM

François-Charles Lapr votte and Camilla Cozzani

Pratt's Energy Law Report

VOLUME 24

NUMBER 5

May 2024

Editor's Note: The Natural Gas Debate Victoria Prussen Spears	143
It's a Gas! Federal and State Developments Continue to Light Up the Natural Gas Debate Benjamin A. Mayer, David L. Wochner and Derek B. Kalbfleisch	145
Future Uncertain for California Climate Disclosure Laws Set to Take Effect in Two Years Jurgita Ashley, Heidi B. (Goldstein) Friedman and Tanya C. Nesbitt	153
U.S. Environmental Protection Agency Proposes Rules to Implement Methane Emissions Fee for Oil and Natural Gas Sources Samuel B. Boxerman, Timothy K. Webster, Brittany A. Bolen and Jim Wedeking	158
Electric Vehicle Tax Credits: An Update Chris DiAngelo, Mitchell A. Fagen, Brandon D. Hadley, Anna-Liza Harris, John P. Keiserman, Richard Nguyen-Le, Howard Schickler and Joseph Topolski	165
European Union Legislators Approve Electricity Market Reform François-Charles Lapr�votte and Camilla Cozzani	170

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call or email:

Raeesa Hoosen, LLB. at (1908) 673-3323

Email: raeesa.hoosen@lexisnexis.com

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at (800) 833-9844

Outside the United States and Canada, please call (518) 487-3385

Fax Number (800) 828-8341

LexisNexis® Support Center <https://supportcenter.lexisnexis.com/app/home/>

For information on other Matthew Bender publications, please call

Your account manager or (800) 223-1940

Outside the United States and Canada, please call (518) 487-3385

ISBN: 978-1-6328-0836-3 (print)

ISBN: 978-1-6328-0837-0 (ebook)

ISSN: 2374-3395 (print)

ISSN: 2374-3409 (online)

Cite this publication as:

[author name], [*article title*], [vol. no.] PRATT'S ENERGY LAW REPORT [page number]

(LexisNexis A.S. Pratt);

Ian Coles, *Rare Earth Elements: Deep Sea Mining and the Law of the Sea*, 14 PRATT'S ENERGY LAW REPORT 4 (LexisNexis A.S. Pratt)

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. Matthew Bender, the Matthew Bender Flame Design, and A.S. Pratt are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2024 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW  BENDER

Editor-in-Chief, Editor & Board of Editors

EDITOR-IN-CHIEF

STEVEN A. MEYEROWITZ

President, Meyerowitz Communications Inc.

EDITOR

VICTORIA PRUSSEN SPEARS

Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

SAMUEL B. BOXERMAN

Partner, Sidley Austin LLP

ANDREW CALDER

Partner, Kirkland & Ellis LLP

MATTHEW DOBBINS

Partner, Vinson & Elkins LLP

M. SETH GINTHER

Partner, Hirschler Fleischer, P.C.

STEPHEN J. HUMES

Partner, Holland & Knight LLP

R. TODD JOHNSON

Partner, Jones Day

BARCLAY NICHOLSON

Partner, Norton Rose Fulbright

ELAINE M. WALSH

Partner, Baker Botts L.L.P.

SEAN T. WHEELER

Partner, Kirkland & Ellis LLP

Hydraulic Fracturing Developments

ERIC ROTHENBERG

Partner, O'Melveny & Myers LLP

Pratt's Energy Law Report is published 10 times a year by Matthew Bender & Company, Inc. Copyright © 2024 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact LexisNexis Matthew Bender, 9443 Springboro Pike, Miamisburg, OH 45342 or call Customer Support at 1-800-833-9844. Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway Suite 18R, Floral Park, New York 11005, smeyerowitz@meyerowitzcommunications.com, 631.291.5541. Material for publication is welcomed—articles, decisions, or other items of interest to lawyers and law firms, in-house counsel, government lawyers, senior business executives, and anyone interested in privacy and cybersecurity related issues and legal developments. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

POSTMASTER: Send address changes to *Pratt's Energy Law Report*, LexisNexis Matthew Bender, 230 Park Ave. 7th Floor, New York NY 10169.

It's a Gas! Federal and State Developments Continue to Light Up the Natural Gas Debate

*By Benjamin A. Mayer, David L. Wochner and Derek B. Kalbfleisch**

In this article, the authors provide an update on the decision by the U.S. Court of Appeals for the Ninth Circuit in California Restaurant Association v. City of Berkeley and discuss efforts at the federal and state levels to address the use of gas for heating and appliances in the case's aftermath.

On April 17, 2023, in *California Restaurant Association (CRA) v. City of Berkeley*, the U.S. Court of Appeals for the Ninth Circuit struck down a Berkeley ordinance that prohibited natural gas piping in new buildings. The Ninth Circuit found that the federal Energy Policy and Conservation Act (EPCA) preempts state and local laws that directly apply to products that use natural gas as well as laws that affect related on-site infrastructure like piping. Since then, the Ninth Circuit denied Berkeley's request to rehear the case and affirmed its decision. The debate over the use of natural gas in residential and commercial buildings has continued to play out throughout the country. This article provides an update on the Ninth Circuit's ruling in *CRA* and discusses efforts at the federal and state levels to address the use of gas for heating and appliances in the case's aftermath.

Looking forward, these issues will continue to have impacts on energy markets and the development of infrastructure as governments stake positions for and against natural gas and attempt to impact the industry through legislation and regulation.

NINTH CIRCUIT AFFIRMS THAT FEDERAL LAW PREEMPTS BERKELEY GAS BAN

On January 2, 2024, the Ninth Circuit voted to deny rehearing of the *CRA* case by the full court and affirmed its prior decision in an amended opinion.¹ In doing so, the court emphasized that EPCA preemption may apply narrowly, i.e., to building codes that target the on-site use of natural gas, and signaled that state and local governments may have broader authority to regulate utility distribution of natural gas.² This distinction—regulation before versus after the

* The authors, attorneys with K&L Gates LLP, may be contacted at ben.mayer@klgates.com, david.wochner@klgates.com and derek.kalbfleisch@klgates.com, respectively.

¹ California Restaurant Association v. City of Berkeley, 89 F.4th 1094, 1098 (9th Cir. 2024).

² Id. at 1103 (“[O]ur holding here has nothing to say about a State or local government regulation of a utility’s distribution of natural gas to premises where covered products might be used.”).

point of delivery—could provide a path for the curtailment of natural gas use without conflicting with EPCA.³

Rather than appeal to the United States Supreme Court, the City of Berkeley has decided to repeal its gas ban. On March 18, 2024, Berkeley and the CRA filed a stipulation and proposed order in the United States District Court for the Northern District of California notifying the court that they had “reached a settlement in principle but need time to finalize and implement it” and asking the court to hold the case in abeyance until September 10, 2024.⁴ As part of the settlement, Berkeley has agreed to repeal the gas ban.⁵ The court signed the order on March 21, 2024.⁶

THE GAS BAN DEBATE TAKES THE NATIONAL STAGE AND THE DEPARTMENT OF ENERGY TAKES ACTION

The debate over the use of natural gas for heating and cooking has also reached the national stage. In January 2023, for example, in response to a December 2022 study that linked gas stoves in homes to childhood asthma cases, Commissioner Richard Trumka Jr., of the US Consumer Product Safety Commission (CPSC), said the agency was considering ways to make gas stoves safer in homes—including by potentially issuing a ban on new gas stoves.⁷ Shortly thereafter, CPSC Chair Alexander Hoehn-Saric refuted that the agency was considering such a ban.⁸ Trumka’s comments resulted in significant angst on Capitol Hill about Biden administration efforts to place restrictions on gas stoves that could limit consumers’ choices in home appliances.

More recently, in October 2023, the US Department of Energy (DOE), acting under its EPCA authority, issued a final rule to tighten efficiency

³ Id. at 1098 (“EPCA preempts Berkeley’s building code because it prohibits natural gas piping in new construction buildings from the point of delivery at the gas meter.”).

⁴ Stipulation and Order to Hold Case in Abeyance Pending Settlement, *Cal. Restaurant Assoc. v. City of Berkeley*, 4:19-CV-07668 (N.D. Cal. Mar. 21, 2024).

⁵ Id.

⁶ Id.

⁷ Ari Natter, US Safety Agency to Consider Ban on Gas Stoves Amid Health Fears, *BLOOMBERG* (Jan. 9, 2023, 7:00 AM), <https://www.bloomberg.com/news/articles/2023-01-09/us-safety-agency-to-consider-ban-on-gas-stoves-amid-health-fears>; Talor Gruenwald, Population Attributable Fraction of Gas Stoves and Childhood Asthma in the United States, *INT’L J. OF ENV’T RSCH. & PUB. HEALTH* (Dec. 21, 2022).

⁸ @HoehnSaricCPSC, *TWITTER* (Jan. 11, 2023, 7:46 AM), <https://twitter.com/HoehnSaricCPSC/status/1613200634194415616>.

standards for commercial gas and electric water heaters.⁹ Manufacturers and importers must comply with this rule starting October 6, 2026.¹⁰

Then, in December, also pursuant to EPCA, DOE issued a final rule to tighten efficiency standards for residential gas furnaces and issued a supplemental notice of proposed rulemaking to tighten standards for consumer water heaters.¹¹ Members of the Senate Western Caucus have since introduced a resolution disapproving of the final rule contending it effectively requires the use of heat pumps in residences.¹² Manufacturers and importers must comply with the gas furnace rule starting December 18, 2028, and the water heater rule within five years of the final rule.¹³

Most recently, on January 29, 2024, DOE issued a final rule setting tighter efficiency standards for both electric and gas stoves and ovens.¹⁴ The final rule was significantly scaled back from the proposed rule, which had inflamed members of Congress when it was proposed in February 2023, especially in the aftermath of Commissioner Trumka's comments.¹⁵ In the final rule, DOE estimates the efficiency standards will reduce carbon dioxide emissions by 0.06

⁹ Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment, 88 Fed. Reg. 69686 (Oct. 6, 2023) (to be codified at 10 C.F.R. pt. 431).

¹⁰ *Id.*

¹¹ Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces, 88 Fed. Reg. 87502 (Dec. 18, 2023) (to be codified at 10 C.F.R. pt. 430); Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters, 88 Fed. Reg. 89330 (Dec. 27, 2023) (to be codified at 10 C.F.R. pt. 430) (Supplement to Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters, 88 Fed. Reg. 49058 (Jul. 28, 2023) (to be codified at 10 C.F.R. pts. 429, 430)).

¹² A Joint Resolution Providing for Congressional Disapproval Under Chapter 8 of Title 5, United States Code, of the Rule Submitted by the Department Of Energy Relating to "Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces," S.J. Res. 58, 118th Cong. (2024).

¹³ Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces, 88 Fed. Reg. 87502; Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters, 88 Fed. Reg. 89330.

¹⁴ Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products, 89 Fed. Reg. 11434 (Feb. 14, 2024) (to be codified 10 C.F.R. pt. 430) (Direct Final Rule).

¹⁵ *Id.*; Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products, 88 Fed. Reg. 6818 (Feb. 1, 2023) (to be codified at 10 C.F.R. pts. 429, 430). DOE issued the final rule as a direct final rule and simultaneously published a Notice of Proposed Rulemaking (NPR) that contains identical standards. If comments provide a reasonable basis for doing so, DOE will withdraw the direct final rule and proceed under NPR. Energy Conservation Program: Energy Conservation Standards for Consumer Con-

metric tons through 2030, the equivalent of the annual emissions from 11,000 homes.¹⁶ According to DOE, the standards will allow new models to maintain “consumer-desired features,” like continuous cast-iron grates and high-input rate burners and only require a “small portion of models” to make changes to their energy efficiency to “match the level of efficiency already demonstrated by the majority of the market today.”¹⁷ Indeed, DOE states that “approximately 97 percent of gas stove models and 77 percent of smooth electric stove models on the market already meet these standards.”¹⁸ Manufacturers and importers must comply with these standards for newly manufactured (including imported) models starting January 31, 2028.¹⁹

STATES ATTEMPT TO MOVE FORWARD WITH NATURAL GAS BANS

State and local governments outside of Berkeley have continued to take actions to curb natural gas use in commercial and residential settings. On February 7, 2024, energy officials from nine states, including California, Colorado, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, and Rhode Island, signed a memorandum of understanding to set a shared goal to deploy heat pumps in 65% of new buildings by 2030 and 90% of new buildings by 2040.²⁰ Some of these states have already taken legislative steps towards enacting this goal.

On May 7, 2023, for instance, New York was the first state to pass legislation prohibiting “fossil-fuel equipment” in new buildings.²¹ The New York law goes into partial effect in 2026, applying initially to only certain buildings, and expands to all new buildings in 2029 with limited exemptions.²²

tional Cooking Products, 89 Fed. Reg. 11548 (Feb. 14, 2024) (to be codified 10 C.F.R. pt. 430) (Notice of Proposed Rulemaking).

¹⁶ Id.

¹⁷ U.S. Dep’t of Energy, DOE Finalizes Cost-Saving Efficiency Standards for New Cooking Products, Based on Recommendations from Manufacturers and Consumer Advocates, ENERGY.GOV (Jan. 29, 2024), <https://www.energy.gov/articles/doe-finalizes-cost-saving-efficiency-standards-new-cooking-products-based-recommendations#:~:text=The%20efficiency%20standards%20being%20adopted,including%20manufacturers%2C%20the%20manufacturing%20trade>.

¹⁸ Id.

¹⁹ U.S. DEP’T OF ENERGY, ENERGY CONSERVATION PROGRAM: ENERGY CONSERVATION STANDARDS FOR CONSUMER CONVENTIONAL COOKING PRODUCTS, EERE-2014-BT-STD-0005.

²⁰ Jason Plautz, 9 States Unveil Plan to Shift to Electric Heat, ENERGYWIRE (Feb. 7, 2024, 6:41 AM)

²¹ N.Y. Energy 11-104(6)(b).

²² Id.

Opposition to the New York gas ban has quickly mounted. In October 2023, gas utilities filed a lawsuit seeking an injunction relying on the same EPCA preemption argument that was successful in the Ninth Circuit.²³ This challenge remains pending. If the New York law is upheld, it could set up a circuit split that could find its way to the U. S. Supreme Court.

On the other side of the country, the Washington state Legislature took a run at what was a first-of-its-kind gas ban at the state level in 2021.²⁴ It did not pass then, but it was in line with the state's many efforts to reduce greenhouse gas (GHG) emissions. The state has, for example, set a goal to reduce building GHG emissions by 70% by 2031, using the 2006 Washington State Energy Code as the baseline.²⁵ To help achieve this goal, the Legislature passed the 2019 Clean Buildings for Washington law.²⁶ To maximize reductions in GHG emissions, the law directs the Washington Department of Commerce to establish energy use intensity targets for the largest existing buildings (greater than 50,000 square feet) in the state.²⁷ It was amended in 2022 to cover "Tier 2 buildings," or buildings between 20,000 and 50,000 square feet.²⁸ Other Washington examples include the 2019 Clean Energy Transformation Act, a program to reach zero-GHG-emission electricity by 2045, and the 2021 Climate Commitment Act, a cap-and-invest program designed to reduce statewide GHG emissions by 95% by 2050.²⁹

After the Washington Legislature failed to enact a state-level gas ban in 2021, the State Building Code Council (SBCC), an executive agency, implemented revisions to the state's building code to achieve a similar result. Those code amendments prohibited, with limited exceptions, fossil-fueled commercial

²³ See *Compl., Mulhern Gas Co. v. Rodriguez*, 1:23-cv-01267 (N.D.N.Y. Oct. 12, 2023).

²⁴ David Benson, et al., *Washington State Legislature Considers First of Its Kind State-Level Natural Gas Ban*, K&L Gates (Feb. 4, 2021), available at <https://www.globalpowerlawandpolicy.com/2021/02/04/washington-state-legislature-considers-first-of-its-kind-state-level-natural-gas-ban/>.

²⁵ RCW § 19.27A.160.

²⁶ H.B. 1257, 2019-20 Leg., 2019 Reg. Sess. (Wash. 2019).

²⁷ RCW § 19.27A.210.

²⁸ RCW § 19.27A.250.

²⁹ Clean Energy Transformation Act, RCW §§ 19.405.010–901; Climate Commitment Act, RCW §§ 70A.65.005–901. The Climate Commitment Act is subject to repeal by Initiative 2117 that will be on the November ballot in Washington state. If voters approve I-2117, the Climate Commitment Act would be repealed in its entirety and state agencies would be prohibited from enacting a similar cap-and-trade program. See Initiative 2117: Concerning carbon tax credit trading, WASH. STATE LEGISLATURE, <https://app.leg.wa.gov/billssummary?BillNumber=2117&Initiative=true> (last visited Mar. 22, 2024).

heating, ventilation, and air conditioning (HVAC) systems and required electric heat pumps for service hot water effective July 1, 2023.³⁰

In response to the *CRA* decision, SBCC delayed implementation of those code revisions to consider amendments meant to avoid potential EPCA preemption issues.³¹ On October 18, 2023, SBCC released a revised code that no longer expressly prohibits fossil-fueled HVAC systems or requires the use of heat pumps, but instead sets energy efficiency requirements on a scoring system dependent on the building's size.³² It took effect on March 15, 2024.³³

Legal challenges to this version of the code are already brewing. At least one trade association has argued that, because of how stringent the standards are, the new code is effectively a ban on natural gas appliances, and therefore is preempted by EPCA.³⁴ While making it more difficult to use gas appliances, SBCC's new code does not explicitly prevent their use. Eventually, a court will likely be asked to decide whether a code that does not explicitly ban the use of natural gas appliances or related infrastructure passes EPCA muster.³⁵ Trade associations renewed their petition for declaratory judgment to invalidate the revised code on January 29, 2024.³⁶ Judge Carol Murphy denied the trade associations' motion to stay implementation of the revised code pending

³⁰ 22 WASH. REG. 14-091 (July 1, 2022); WASH. ADMIN. CODE § 51-11C-40314 (2023) (commercial HVAC); WASH. ADMIN. CODE § 51-11C-40402 (2023) (commercial water heating). The same building code revisions also addressed residential gas use with restrictions on the types of gas appliances permitted in new residential buildings. 23 WASH. REG. 02-060 (Jan. 3, 2023); WASH. ADMIN. CODE § 51-11R-40392 (2023) (residential space heating); WASH. ADMIN. CODE § 51-11R-40340 (2023) (residential water heating).

³¹ 23 WASH. REG. 20-022.

³² 23 WASH. REG. 21-105 (Oct. 18, 2023), <https://lawfilesexternal.wa.gov/law/wsr/2023/21/23-21-105.htm> (residential); 23 WASH. REG. 21-106 (Oct. 18, 2023), <https://lawfilesexternal.wa.gov/law/wsr/2023/21/23-21-106.htm> (commercial).

³³ 24 WASH. REG. 03-085 (Jan. 16, 2024).

³⁴ See Jerry Cornfield, Washington Makes Another Run at Heat Pump Rules, WASH. STATE STD. (Nov. 28, 2023), <https://washingtonstatestandard.com/2023/11/28/washington-makes-another-run-at-heat-pump-rules/#:~:text=The%20Building%20Code%20Council%20had.policy%20filed%20their%20own%20lawsuits.>

³⁵ See *Cal. Rest. Ass'n v. City of Berkeley*, 89 F.4th 1094, 1103 (9th Cir. 2024) (“by enacting EPCA, Congress ensured that States and localities could not prevent consumers from using covered products in their homes, kitchens, and businesses”) (emphasis added).

³⁶ Second Amended Petition for Declaratory Judgment (RCW 34.05.570(2) and RCW 42.30.120), *Nw. Reg'l Council of the Nat'l Constr. All. v. Wash. State Bldg. Code Council*, No. 23-2-00615-34 (Thurston Cnty. Sup. Ct. Jan. 23, 2024).

litigation on March 8, 2024.³⁷ As a result, the new code will remain in effect while the litigation is ongoing.³⁸

Perhaps taking a hint from the Ninth Circuit, during last session, the Washington Legislature considered legislation that would have curbed natural gas consumption by targeting gas distribution. On January 22, 2024, the Washington House of Representatives passed H.B. 1589. As proposed, the law would have prohibited utilities in large metropolitan areas from providing natural gas service to new customers.³⁹ It would have also eliminated a gas company's "obligation-to-serve" in these areas.⁴⁰ This would have marked a significant change in, and departure from, foundational public utility law in Washington state—as well as many other states across the country that have similar "obligation-to-serve" frameworks governing state public utilities.

H.B. 1589 was different from the local ordinance struck down in *CRA* in at least one key respect. Rather than regulating gas appliances or their on-site infrastructure, it would have regulated gas utility services by state-regulated entities. As the Ninth Circuit noted in *CRA*, this type of regulation may be outside EPCA's preemptive scope.⁴¹

By the time the bill left the Senate, the provisions restricting natural gas distribution and eliminating the obligation-to-serve had been removed.⁴² The amended bill directs large utilities to develop plans to decarbonize their systems.⁴³ It passed both chambers of the Washington Legislature on March 7, 2024 and the governor signed the bill on March 28, 2024.⁴⁴ The bill is effective immediately.⁴⁵ While the final bill is far less aggressive than the original bill, it is possible that future legislatures looking to reduce natural gas use without violating EPCA could resurrect it in some form.

³⁷ Order Denying Petitioners' Motion to Stay the Effective Date of the State Building Codes and Energy Codes, Nw. Reg'l Council of the Nat'l Constr. All. v. Wash. State Bldg. Code Council, No. 23-2-00615-34 (Thurston Cnty. Sup. Ct. Mar. 8, 2024).

³⁸ *Id.*

³⁹ H.B. 1589, 2023-24 Leg., 2024 Reg. Sess. (Wash. 2024).

⁴⁰ *Id.*

⁴¹ *City of Berkeley*, 89 F.4th at 1103 (noting that the court's decision "has nothing to say about a State or local government regulation of a utility's distribution of natural gas to premises where covered products might be used").

⁴² H.B. 1589, 2023-24 Leg., 2024 Reg. Sess. (Wash. 2024).

⁴³ *Id.*

⁴⁴ HB 1589 – 2023-24, Wash. State Legislature, <https://app.leg.wa.gov/bills/summary?BillNumber=1589&Year=2023&Initiative=false> (last visited Apr. 3, 2024).

⁴⁵ *Id.*

And in indications of more battles to come, the International Code Council (ICC), the organization that creates widely used baselines for building safety and sustainability, proposed for its 2024 model standards to recommend the use of heat pumps and electric vehicle charging infrastructure in new buildings.⁴⁶ The ICC appeals board rejected appeals to the new standards in a recommendation to the ICC board of directors on March 4, 2024.⁴⁷ The ICC board of directors met on March 18, 2024, and affirmed in part and rejected in part the appeals.⁴⁸ The ICC board of directors moved the provisions regarding heat pumps and electric vehicle charging infrastructure to an appendix as nonmandatory provisions that could be adopted for additional energy efficiency and GHG reduction, because they found these provisions did not directly affect building energy conservation and were therefore outside the scope of the model standards.⁴⁹ It also moved and noted provisions that could be preempted by EPCA.⁵⁰

⁴⁶ Jordan Wolman, Building code battle ramps up ahead of key appeals hearings, *ENERGY-WIRE* (FEB. 22, 2024, 6:21 AM).

⁴⁷ 2024 IECC Appeals: Appeals Board Report to ICC Board of Directors, *INT'L CODE COUNCIL* (Mar. 4, 2024).

⁴⁸ The International Code Council Board of Directors Makes Final Decision on 2024 IECC Appeals and Addresses Preemption Challenges, *INT'L CODE COUNCIL*, <https://www.iccsafe.org/about/periodicals-and-newsroom/icc-pulse/the-international-code-council-board-of-directors-makes-final-decision-on-2024-iecc-appeals-and-addresses-preemption-challenges/> (last visited Mar. 21, 2024).

⁴⁹ *Id.*

⁵⁰ *Id.*