



AMERICAN PUBLIC GAS ASSOCIATION

May 15, 2023

U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
1000 Independence Avenue SW
Washington, DC 20585-0121

Submission via ZERH@doe.gov

**Re: Comments on the Office of Energy Efficiency and Renewable Energy's Draft
Zero Energy Ready Home Multifamily Program Version 2**

Office of Energy Efficiency and Renewable Energy team:

The American Public Gas Association ("APGA") appreciates the opportunity to provide feedback on the Department of Energy's ("DOE") Draft Zero Energy Ready Home ("ZERH") Multifamily Program Version 2 ("V2"). Due to the limited and more generalized nature of these comments, we felt it most appropriate to submit this letter as opposed to utilizing the provided matrix.

APGA is the trade association for more than 730 communities across the U.S. that own and operate their retail natural gas distribution entities. They include not-for-profit gas distribution systems owned by municipalities and other local government entities, all accountable to the citizens they serve. Public gas systems focus on providing safe, reliable, and affordable energy to their customers and support their communities by delivering fuel to be used for cooking, clothes drying, and space and water heating, as well as for various commercial and industrial applications.¹

Under the ZERH Multifamily Program V2, dwelling units in all multifamily residential buildings can qualify for ZERH certification and the 45L tax credit, amended under the Inflation Reduction Act ("IRA"), beginning January 1, 2024.² To meet the performance targets outlined in V2, multifamily dwellings can qualify using the Prescriptive path, the Energy Rating Index ("ERI") path, or the ASHRAE 90.1 compliance path ("ASHRAE Path"). Amended from Version 1, there are no height limitations on qualifying multifamily dwellings, which also includes townhouses and mixed-use

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

² U.S. DOE Office of Energy Efficiency and Renewable Energy, "ZERH Multifamily Version 2," <https://www.energy.gov/eere/buildings/zerh-multifamily-version-2>.

buildings with more than 50% square feet for residents.³ The program's overall target is to achieve 15% or greater savings over the 2021 International Energy Conservation Code ("IECC").⁴

As energy providers, APGA member gas systems are environmental stewards, prioritizing sustainability, emissions reductions, and anything that may positively affect their impact on the environment. As DOE works to update ZERH certification, APGA urges the agency to create a process that allows eligible states and authorities having jurisdiction to leverage public utilities, especially the workforce and existing assets, and natural gas more broadly to support the goals of the IRA. We offer the following comments on DOE's draft ZERH Multifamily V2.

1. Promoting Fuel Neutrality

APGA supports goals to reduce greenhouse gas emissions in the United States, including through compliance with the latest and zero energy codes. Consumers value natural gas as a cost-effective, efficient, and reliable energy solution. Given its growing domestic supply and safe, reliable, and efficient delivery system reaching almost every home and business in America, the direct use of natural gas is an important part of our country's energy future and a pathway to addressing climate change. In fact, natural gas has been a big driver behind our country's declines in carbon emissions. Notably, America's gas utilities have added 30 million residential customers since 1970 with virtually no increases in emissions.⁵

In achieving emissions reduction goals, APGA cautions against programs that put all our "eggs in one basket" by eliminating Americans' ability to choose the energy source best fit for their needs and budget. The mandatory practices in ZERH V2 actively promote fuel switching, particularly through the Electric Vehicle and PV Ready Checklists, in addition to electric appliance readiness standards. APGA urges DOE to maintain fuel neutrality as it finalizes ZERH V2 requirements. Every jurisdiction has different resources and needs to serve, so overly prescriptive targets and requirements will preclude many communities from participating in ZERH certification and receiving the 45L tax credit, which might lead to setbacks for our country's decarbonization goals.

The need for fuel neutrality in any ZERH Program is further underscored by a recent court decision from the United States Court of Appeals for the Ninth Circuit, *California Restaurant Association v. City of Berkeley* ("CRA v. Berkeley").⁶ In *CRA v. Berkeley*, the court found that the Energy Policy and Conservation Act ("EPCA")⁷ preempts the city's building code that banned natural gas piping

³ U.S. DOE Office of Energy Efficiency and Renewable Energy, "Slides from ZERH Multifamily Version 2 Draft Webinar," <https://www.energy.gov/sites/default/files/2023-04/ZERH%20Multifamily%20Version%202%20Webinar%20Slides%204.12.23.pdf>.

⁴ *Id.*

⁵ American Gas Association, "Implications of Policy-Driven Residential Electrification," <https://www.aga.org/research/reports/implications-of-policy-driven-residential-electrification>.

⁶ No. 21-16278

⁷ 42 U.S.S. § 6297(c).

in new buildings.⁸ APGA believes that this holding should also be extended to building codes and standards that create a de facto ban on such infrastructure and appliances within buildings, including, but not limited to, “electric ready” provisions that require electric outlets for appliances and necessary electrical panel capacity to be installed any time gas piping and appliances are installed (but not vice versa). While the *CRA v. Berkeley* decision would not prohibit the construction of “electric ready” or “all electric” buildings, APGA believes that it would be a misappropriation of American taxpayer dollars for a federal agency to caveat tax credits or other funding on a standard that a jurisdiction could not itself adopt due to federal preemption, especially since there is no guarantee of energy savings and a potential for stranded assets in the case of “electric ready,” “EV ready,” etc.

2. Designing Programs for Maximum Impact

The natural gas pipeline system has declining emissions while new gas customers are continuously added. Accordingly, codes and standards solutions that leverage natural gas can help achieve resiliency, energy efficiency, and emissions reduction goals. Natural gas end uses can be even more impactful to these purposes when paired with renewable natural gas (“RNG”)⁹ and hydrogen¹⁰, which are excluded from ZERH certification requirements. RNG and hydrogen can help Americans lessen environmental impacts, all while still using the safe, existing, and resilient infrastructure. To achieve the ambitious goals of the IRA, APGA urges DOE to recognize the critical role of natural gas in America’s clean energy future.

In addition, APGA and other organizations have previously challenged electric readiness requirements in the International Code Council (“ICC”) Model Energy Code development process. There is no guarantee that provisions for electric vehicles, electric heat pump water heaters, and electric heat pump space heaters would even reduce energy consumption and emissions for multifamily homes.

3. Other Considerations for ZERH Multifamily Program V2

Under the ZERH Multifamily V2, DOE relies heavily on ENERGY STAR qualifications. DOE recognizes independent organizations such as Multifamily Review Organizations (MROs) and

⁸ The court found that “by its plain language, EPCA preempts Berkeley’s regulation here because it prohibits the installation of necessary natural gas infrastructure on premises where covered natural gas appliances are used.” The court went on to explain that “EPCA does not permit States and localities to dodge preemption by hiding ‘energy use’ regulations in building codes.” *CRA v. Berkeley*.

⁹ RNG is pipeline-compatible, ultra-clean, and low-carbon. It is derived from the breakdown of organic wastes and can be processed to be used in existing natural gas infrastructure interchangeably with geologic natural gas in homes and businesses. Blending even small amounts of RNG with geologic natural gas can produce significant emissions reductions. Because RNG is created by recycling biomethane collected from agricultural waste, landfills, and wastewater treatment plants into a usable product, it has the potential to yield a carbon-negative lifecycle emissions result.

¹⁰ Hydrogen has the capability to be blended with natural gas or possibly used exclusively; both have decreased emissions. In the future, blended hydrogen or hydrogen exclusively may be safely utilized in homes, businesses, and commercial applications.

Home Certification Organizations (HCOs) to oversee and verify multifamily dwellings undergoing ZERH certification. In addition, V2 promotes ENERGY STAR appliances and efficiency standards.

APGA asks that DOE exercise caution in relying upon certain ENERGY STAR programs, as some have taken a misguided direction and do not include natural gas-fueled appliances. If DOE recognizes only electric appliances as criteria, it may encourage fuel switching from more efficient to less efficient appliances on a full fuel cycle basis. Instead, DOE should set criteria that allow efficient gas-fired technologies to be eligible for ZERH certification and 45L tax credits, even if that means looking outside of programs like ENERGY STAR.

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APGA members play a critical role in delivering clean, reliable, and affordable energy to Americans. In considering the next version of the ZERH Multifamily Program, DOE should allow states and their communities to leverage the existing natural gas distribution network and fuel delivery infrastructure to meet both the goals of the IRA and the climate goals of the current Administration.

We thank you for the review and consideration of these comments and look forward to continuing to partner with DOE as it develops a path forward for the clean energy future. If you have any questions regarding this submission, please do not hesitate to contact us.

Respectfully submitted,



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American Public Gas Association