17 September 2019

To: Interested Parties

Subject: Standards Council Decision (Final): D#19-22
Standards Council Agenda Item: SC#19-8-3- v-11
Date of Decision*: 6 August 2019
NFPA 70®, National Electrical Code®, 2020 Edition

Dear Interested Parties:

At its meeting of August 5-7, 2019, the Standards Council considered an appeal on the above referenced matter. The Council’s Final decision is now available and is attached herewith.

Sincerely,

Dawn Michele Bellis
Secretary, NFPA Standards Council

cc: S. Everett, S. Gallagher, L. Fuller, J. Sargent, G. Frost
   Members, Code-Making Panel 7 (NEC-P07)
   Members, NEC Correlating Committee (NEC-AAC)
   Members, NFPA Standards Council (AAD-AAA)
   Individuals Providing Appeal Commentary

*NOTE: Participants in NFPA’s standards development process should know that limited review of this decision may be sought from the NFPA Board of Directors. For the rules describing the available review and the method for petitioning the Board for review, please consult section 1-7 of the Regulations Governing the Development of NFPA Standards and the NFPA Regulations Governing Petitions to the Board of Directors from Decisions of the Standards Council. Notice of the intent to file such a petition must be submitted to the Clerk of the Board of Directors within 15 calendar days of the Date of Decision noted in the subject line of this letter.
SUMMARY OF ACTION (for convenience only; not part of official decision): The Standards Council voted to deny the appeal to overturn the results of the Code Making Panel amendment ballot results on CAM 70-36 and return to First Revision No. 8475 text.

DECISION:
At its meeting of August 5-7, 2019, the Standards Council considered an appeal from Fred Hartwell of Hartwell Electrical Services, Inc. The appeal seeks the Standards Council find that NFPA staff failed to follow the Regulations Governing the Development of NFPA Standards (the “Regs”) by not presenting the proper amendment ballot on First Revision No. 8475 to Code Making Panel 7 (“CMP 7”) and the Correlating Committee (“CC”) after CAM 70-36 passed on the floor of the Technical Meeting. Specifically, the appeal requests that as a result of the failure to issue a proper ballot, such First Revision No. 8475 be included in the 2020 edition of the National Electrical Code.

As background, CMP 7 created First Revision No. 8475 (“FR 8475”), which established certain exemptions in Section 551.71(F) related to GFCI protection of receptacles used in recreational vehicle (“RV”) site equipment. At the Second Draft meetings, the CC revised FR 8475 and created Second Correlating Revision No. 30 (“SCR 30”). In creating SCR 30, the CC kept the exemption for GFCI protection and did not substantially change the technical meaning of FR 8475. Rather, the effect of SCR 30 was to standardize GFCI “exemption” language throughout the National Electrical Code in Articles that provide exemptions for GFCI protection.

Notices of Intent to File a Motion (NITMAM) to reject an identifiable part of SCR 30 were filed by Keith Waters and Randy Dollar, and certified by the Motions Committee as a single motion, which was presented on the floor at the NFPA Technical Meeting as CAM 70-36. CAM 70-36 proposed to reject an informational note and the entire exemption for GFCI protection, which made GFCI protection a requirement for RV site equipment. CAM 70-36 passed the floor of the NFPA Technical Meeting.

Following the NFPA Technical Meeting, CMP 7 and the Correlating Committee (“CC”) were balloted on the amendment proposed through CAM 70-36 for the purpose of determining whether they agreed with the action of the NFPA membership (the “Membership”). Although the amendment ballot achieved the necessary 2/3 affirmative vote of the CC, it failed to achieve the necessary 2/3 affirmative vote of CMP 7 to recommend the Association action. The Appellant asserts that CMP 7 and the CC should not have been balloted on the amendment that passed on the floor of the Technical Meeting, but instead should have been balloted on the first revisions related to the text of the CAM based on the Regs Table 1 Amending Motions and Ballot Table (“Table 1”).

Table 1 needs to be read in the context of the entire NFPA Standards Development process. In this process, the Technical Meeting provides an important opportunity for the Membership to provide input on any proposed change to a code or standard. It is an opportunity for unresolved issues at the Comment Stage to
be presented through Certified Amending Motions and debated by the Membership. If the Membership agrees with a Certified Amending Motion (“CAM”), the vote signals there is not agreement with the position of the Technical Committee (or Code Making Panel) as evidenced in the Second Draft Report. When the NFPA Membership is not in agreement with the result from the Second Draft, the overarching purpose of the standards development process is to determine whether the Technical Committee can reach agreement with the recommendation proposed by the NFPA Membership.

To accomplish this, the Regs provide for a variety of types of CAMs, which, by their nature allow the public to express varying degrees of disagreement with the Technical Committee’s work after the Second Draft. For example, a “motion to reject an identifiable part of a second correlating revision” is a motion that is a way to express disagreement with part, but not all, of a second revision made by a correlating committee. The implication is that the maker of the motion is satisfied with some, but not all of the second correlating revision, and otherwise seeks to preserve some part of it. This is in contrast to a “motion to reject a second correlating revision and any related portions of first revisions and first correlating revisions”, which is a way to express disagreement with the second correlating revision and everything related to it. The implication is the maker of the motion completely disagrees with the Technical Committee revisions at every stage and seeks to reject any such revisions entirely.

In the instant circumstances, although CAM 70-36 was framed as a motion to reject an identifiable part of SCR No. 30, its effect was to reject the technical substance of the entire revision to Article 551.71. By supporting CAM 70-36, the Membership agreed with the wholesale rejection of the GFCI exemption created by CMP 7 and recommended that there be no exemption for GFCI protection of receptacles used in RV site equipment. When the Membership disagrees with the Technical Committee’s technical revisions at both first and second drafts, as it did substantively with CAM 70-36, the process anticipates a return to previous edition text because there is no alignment between the Membership and the Technical Committee on a change to the text of the standard. In this instance, balloting the CMP on the first revision text would have the effect of completely ignoring the the recommendation from Membership to reject that very same exemption.

Council finds that treating CAM 70-36 solely as it was labeled and ignoring the purpose and effect of the recommendation from the Membership would be a matter of form over substance. Table 1 exists in the context of the entire standards development process which provides for the incorporation of input from the Membership on any proposed change to a code or standard. That purpose would be frustrated if CAM 70-36 was treated solely based on the way the motion was labeled by its maker without regard to the effect of the motion.

In reviewing the entire record before it, Council notes that CMP 7 and the CC were balloted with mixed results on the Membership’s recommendation to require GFCI protection in RV site equipment. CMP 7 continues to favor an exemption for GFCI protection of receptacles used in recreational vehicle site equipment, and while the Correlating Committee expressed substantive agreement with CMP 7 at Second Draft, the CC agreed with the Membership’s recommendation on correlation. For these reasons and the reasons stated above, the Council concludes that there is not agreement with regard to the proposed revision to Article 551.71(F), and therefore, it returns to previous edition text.

Accordingly, the Council has voted to deny the appeal. The effect of this action is that the NFPA 70, National Electrical Code will neither include the text of Second Correlating Revision No. 30 nor First Revision No. 8475. The language of Article 551.71(F) will return to previous edition text.

Council requests NFPA staff to review Table 1 and the Regulations to assess whether or not there is any need for clarification.

1 Regs, Section 4.5.1
Council Member Michael Johnston recused himself from the deliberations and vote on the appeal.