



Dawn Michele Bellis
Secretary, Standards Council

21 August 2019*

To: Interested Parties

Subject:

Standards Council Decision (Final):	D#19-9
Standards Council Agenda Item:	SC#19-8-3-dd-1
Date of Decision:	6 August 2019
NFPA 70 [®] , <i>National Electrical Code</i> [®] , 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,

A handwritten signature in black ink, reading "Dawn Michele Bellis", is positioned below the word "Sincerely,".

Dawn Michele Bellis
Secretary, NFPA Standards Council

cc: S. Everett, S. Gallagher, L. Fuller, M. Earley, G. Frost
Members, Code-Making Panel 4 (NEC-P04)
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 publication date of this Decision.



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SUMMARY OF ACTION (for convenience only; not part of official decision): The Standards Council voted to deny the appeal to overturn the Association Action on CAM 70-45 and return to Second Draft text.

DECISION:

At its meeting of August 5-7, 2019, the Standards Council considered an appeal from Jason Fisher of Solar Energy Industries Association. The appeal seeks the Standards Council find that NFPA staff failed to follow the *Regulations Governing the Development of NFPA Standards (the “Regs”)* by modifying CAM 70-45 and publishing such changes to the NFPA Technical Meeting Agenda (the “Agenda”), instead of the Motions Committee Report. Specifically, the appeal requests that the Standards Council overturn the Association Action on CAM 70-45 (previously identified as Motion Sequence 70-43 in the May 17, 2019 Motions Committee Report) (the “CAM”) for the 2020 Edition of NFPA 70[®], *National Electrical Code*[®] and restore Section 705.11(D) to Second Draft text.

As background, Code-Making Panel (CMP) 4 supported First Revision No. 8608 and Second Revision No. 8159 through ballot. A Notice of Intent to Make a Motion (NITMAM) to Reject Second Revision No. 8159 and any Related Portion of First Revision No. 8608 was filed by Timothy Croushore of Edison Electrical Institute. The NITMAM was certified as a valid motion, and when the Motions Committee Report was published, it reflected that the CAM was to “Reject Second Revision No. 8159”; and, in error, failed to include Mr. Croushore’s intent to also Reject First Revision No. 8608. Following posting of the Motions Committee Report, it was brought to NFPA staff’s attention that the CAM did not reflect the NITMAM as filed. NFPA staff sought approval from the Motions Committee and Mr. Croushore to correct the error, then posted the updated motion on the Agenda through NFPA’s website. However, the update was inadvertently omitted from the Motions Committee Report. The CAM was presented to the floor at the NFPA Technical Meeting and passed the floor vote of the NFPA membership. In accordance with the *Regs*, no ballot of this successful CAM was required and the recommendation to Council is to return to previous edition text.

On appeal, the Council accords great respect and deference to the NFPA standards development process. In conducting its review, the Council will overturn the results of that process only where a clear and substantial basis for doing so is demonstrated.

On one hand, if the Council were to follow Mr. Fisher’s suggestion and reject an otherwise properly submitted NITMAM, it would unfairly prevent an objection from coming before the NFPA membership due to inadvertent staff error. Council also notes that the NFPA membership supported CAM 70-45 by a wide margin on the floor of the Technical Meeting.

On the other hand, to the extent the Motions Committee Report failed to reflect the changes to the CAM, Mr. Fisher was not on notice of the changes because he was relying on the Report, and not the Agenda for the list of CAMs to be presented. At the hearing, Mr. Fisher acknowledged that he was aware there was a CAM on Section 705.11(D) because it was published in the original Motions Committee Report in May.

Council inquired as to what would have been different for Mr. Fisher had he been aware sooner of the change to the motion on Section 705.11(D), and Mr. Fisher reported that he would not have likely taken different actions leading up to the Technical Meeting.

In reviewing the entire record before it, Council finds that any errors in developing or publishing the Motions Committee Report do not warrant overturning the process. Given the Appellant's representation that he would not have likely done anything different, there does not appear to be any material harm. Council also notes that there is no apparent consensus among the NFPA membership, CMP 4 and the Correlating Committee with regard to Section 705.11(D), and for that reason, yielding to the standards development process and returning to previous edition text is the last point of agreement among the materially affected interests.

Accordingly, the Council has voted to deny the appeal. The effect of this action is that the NFPA 70, *National Electrical Code*, will not include the text of Second Revision No. 8159 or any Related Portions of First Revision No. 8608.

Council directs NFPA staff to update both the Motions Committee Report and the Agenda when the Motions Committee approves changes after the Report's initial posting (and in accordance with the *Regs*).

Council Member Michael Johnston recused himself from the deliberations and vote on the appeal.