4 April 2023*

To: Interested Parties

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Dear Interested Parties:

At its meeting of March 20-21, 2023, 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, C. Duffy, J. Sargent
   Members, NEC Code-Making Panel 10 (NEC-P10)
   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.
Standards Council Decision (Final): D#23-3  
Standards Council Agenda Item: SC#23-3-14  
Date of Decision: 21 March 2023  
NFPA 70®, National Electrical Code®, 2023 Edition

**SUMMARY OF ACTION (for convenience only; not part of official decision):** The Standards Council voted to deny the appeal requesting Council to Requests that the Standards Council rescind Chapter 2, Sections 215.18(E), 225.42(E), and 230.67(E) and to clarify the appeals process for inaction appeals (as defined in 2.8.1 of the ANSI *Essential Requirements*) in the *Regulations Governing the Development of NFPA Standards* regarding NFPA 70®, National Electrical Code®, 2023 Edition.

**DECISION:**
At its meeting of March 20-21, 2023, the Standards Council considered the appeal of Jack Klaus, Maxivolt, and James Moellmann, Maxivolt. The appellants request that the Standards Council rescind Chapter 2, Sections 215.18(E), 225.42(E), and 230.67(E) and to clarify the appeals process for inaction appeals (as defined in 2.8.1 of the ANSI *Essential Requirements*) in the *Regulations Governing the Development of NFPA Standards* for the 2023 edition of NFPA 70®, National Electrical Code®.

As background, Maxivolt pursued three appeals to Standards Council in August of 2022 to reject the language proposed for the 2023 edition of NFPA 70 in Sections 215.18(E), 225.42(E), and 230.67(E), respectively. All appeals were denied (see Decisions D#22-7, D#22-8, and D#22-9 at www.nfpa.org/sc2022) with the Council finding in each that there was no clear and substantial basis upon which to overturn the results yielded by the standards development process. As part of those three decisions, the Council encouraged the Appellant to continue participating in the standards development process, to apply for membership on Code-Making Panel 10 (“CMP 10”), and for the panel to take any additional information provided into consideration should a Tentative Interim Amendment or Public Input to the next revision cycle be filed. To date, application for CMP 10 membership has been submitted (which will be acted upon by Council at the August 2023 meeting), but neither Public Input nor a Tentative Interim Amendment have been submitted within the standards development process. Subsequent to the Council’s decisions on the appeals, Maxivolt filed a Petition to the Board of Directors seeking review of Council’s decisions, and the Petition was denied, as well. While Maxivolt had exhausted its appeals on that topic within the Standards Development Process, it asserted it had a basis for a new appeal. Council gave the appellant the benefit of the doubt and granted request for a hearing.

As an American National Standard (ANS), the NEC must be developed in accordance with the *Regulations Governing the Development of NFPA Standards* (the “Regs”), which are accredited by American National Standards Institute (ANSI) to meet ANSI’s *Essential Requirements* for due process (the “Essential Requirements”). In the present appeal, appellants set forth two claims: the first is that NFPA failed to comply with §2.4.2 of the *Essential Requirements* by failing to “resolve potential conflicts” with stakeholders Underwriters Laboratories (“UL”) and IEEE’s Power Engineering Society Surge Protection Device Committee (“SPDC”). Section 2.4.2 of the *Essential Requirements* states that good-faith efforts for coordination/harmonization shall include compliance with §§2.1, 2.4, 2.6, and 4.3, which require, as examples, timely notice of actions and standards activity, process to resolve potential conflicts, and consideration of written views and objections.
NFPA’s *Regs*, include several ways to satisfy §2.4.2 of the *Essential Requirements* of “good faith” effort to coordinate and harmonize ANSI standards, and the standards development record reflects NFPA followed the *Regs* with regard to this matter. Timely and adequate notice of actions related to standards development are accomplished through filing of PINs and BSR 108s (published in ANSI’s weekly publication *Standards Action*), as well as through NFPA doc info alerts, public notices on NFPA’s website of standards activity, as examples. Specifically, for the 2023 edition of NFPA 70, PINs were filed to initiate revisions to the 2020 edition and published in the January 10, 2020 edition (Volume 51, No. 2) of ANSI *Standards Action*. The purpose of this notification is to alert the world that NFPA is initiating standards revision activities.

Following posting of the First Draft Report and Second Draft Report respectively, NFPA filed the appropriate BSR 108 forms to alert the world that NFPA 70 was accepting Public Comments and NITMAMs (published in the July 16, 2021 (Volume 52, No. 29) and April 8, 2022 (Volume 53, No. 14) editions respectively). In fact, NFPA exceeds the single BSR 108 filing requirement and provides the public with two published notices in ANSI *Standards Action*. Once Council issued the 2023 edition—after hearing and deciding all appeals in August—NFPA filed the final required documentation of public notice, the BSR 109, and notice was published of the newly issued edition in ANSI *Standards Action* on September 16, 2022 (Volume 53, No. 37).

In addition to NFPA meeting obligations for harmonization through publication of notices, the organizations claimed by appellants that should have been consulted (namely IEEE and UL), in fact, have representatives who sit as voting members on CMP 10—the Code-Making Panel responsible for the text at issue. The CMP-10 consensus body members from both UL and IEEE participated during the revision cycle: attending meetings where the amendments at issue were discussed, as well as voting on proposed revisions through the balloting process post-meetings. Neither standards developer, IEEE nor UL, has made claim (as required by ANSI) of a lack of coordination or harmonization between its standards and NFPA 70.

As evidence of failure to harmonize with IEEE, the appellants point to a letter from Steve Hensley, Chair SPDC, and Ray Hill, SPDC Low Voltage Subcommittee Chair, which states that the IEEE representative on CMP 10 does not represent the IEEE section that would raise harmonization issues. This letter was previously introduced during the standards development process and considered in appellant’s prior appeal. However, upon public notice of this appeal, Council received notice from Dave Ringle, Director IEEE-SA Governance, which has authority over SPDC, that the opinions expressed within Mr. Hensley and Mr. Hill’s letter “did not necessarily represent the position of IEEE, the IEEE Standards Association, or the IEEE Power & Energy Society.” Mr. Ringle stated the letter should have included “a disclaimer stating that the document solely represents the views of the authors. Simply, IEEE nor UL have come forward with claims of failure to harmonize to NFPA or to ANSI.

The second claim raised by the appellants was that NFPA’s *Regs* did not clearly articulate a right of appeal for “inaction”. Council’s consideration of the claim for inaction as described herein is evidence that NFPA’s standards development process allows for consideration of all appeals, including an appeal based on inaction. Section 1.6.1 of the *Regs* clearly states that:

[a]nyone can appeal to the Standards Council concerning procedural or substantive matters related to the development, content, or issuance of any NFPA Standard of the NFPA or on matters within the purview of the authority of the Standards Council, as established by the by laws and as determined by the Board of Directors.

The Council finds this right of appeal to be broadly written to include “inaction” or failure to act as may be required in the standards development process.

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.

Appellants have failed to bring forward new or different information that was not known at the time of first appeals, heard and decided in August 2022, pertaining to these same sections of the NEC. In addition, appellants’ requests to remove requirements in the current edition of the NEC is not timely under the Regs, which requires an appeal related to the issuance of an NFPA Standard to be filed no later than 20 days after the close of the NFPA Technical Meeting at which NFPA membership action was recommended. Nonetheless, the Council has reviewed the entire record concerning this matter and considered all the arguments put forth in this appeal. Based upon that review, the Council determined this appeal does not present any clear and substantial basis upon which to overturn the results yielded by the NFPA standards development process. Accordingly, the Council has voted to deny the appeal. The effect of this action is that the requested text in NFPA 70, National Electrical Code, 2023 edition will not be rescinded nor will the Regulations Governing the Development of NFPA Standards be revised to include procedures of appeal for “inactions”.

Council Members Michael J. Johnston, Rodger Reiswig and Dwayne Sloan recused themselves from the deliberations and vote on the appeal.