From: Jenna Kay
To: Cnty 2025 Comp Plan; Jeffrey Delapena
Subject: FW: [wacaucus] Court decision language on I-2066
Date: Thursday, June 26, 2025 2:39:34 PM

From: Don Steinke <crvancouverusa@gmail.com>
Sent: Wednesday, June 4, 2025 4:47 PM
To: Small, Rebecca <Rebecca.Small@cityofvancouver.us>
Cc: Jenna Kay <Jenna.Kay@clark.wa.gov>; Shari Phiel <shari.phiel@columbian.com>; Cathryn Chudy <chudyca@gmail.com>; Nancy and Peter Fels <felget@comcast.net>; Rick and Cassie Marshall <camasrick@gmail.com>
Subject: Re: [wacaucus] Court decision language on I-2066

Months ago, I read that the law required the Attorney General to represent the Initiative in Court.

As Nick said, "While I personally disagreed with I-2066, it was passed by Washington voters and is the law of the state. My job as Attorney General is to enforce and defend the laws of Washington and I will continue to vigorously do so in this case."

Don

On Wed, Jun 4, 2025 at 3:23 PM Small, Rebecca <Rebecca.Small@cityofvancouver.us> wrote:

> Thank you so much for sharing, Don. I expected the appeal from the BIAW but didn't expect the AG to align with the initiative after it had been declared unconstitutional on a fairly cut-and-dry technical issue.
>
> Rebecca
>
> ---
>
> **From:** Don Steinke <crvancouverusa@gmail.com>
> **Sent:** Wednesday, June 4, 2025 1:32 PM
> **To:** Jenna Kay <jenna.kay@clark.wa.gov>; Small, Rebecca <Rebecca.Small@cityofvancouver.us>; Shari Phiel <shari.phiel@columbian.com>; Cathryn Chudy <chudyca@gmail.com>; Nancy and Peter Fels <felget@comcast.net>; Rick and Cassie Marshall <camasrick@gmail.com>

Subject: Fwd: [wacaucus] Court decision language on I-2066

fyi
Don Steinke

---------- Forwarded message ---------

From: **jlazar jimlazar.com** <jlazar@jimlazar.com>

Date: Wed, Jun 4, 2025 at 11:59 AM

Subject: [wacaucus] Court decision language on I-2066

To: WA Caucus <wacaucus@nwec-caucus.org>

While the Superior Court ruled I-2066 invalid months ago, the Judge took a long time to actually issue a written (appealable) ruling (May 9). And it took me a while to notice that it has been issued.

Now that it has been issued, the BIAW and the Attorney General have appealed that decision to the Supreme Court. See Nick Brown's press release language below.

There is not yet a schedule for briefs and arguments at the Supreme Court. They usually move pretty quickly on initiative appeals, knowing that the "law is in limbo" in the interim. So far all I've seen is the "notice of appeal" which is a very succinct one-page notice.

Here are the guts of the decision. The full decision is attached for any who need to know the details.

The Washington Constitution, Article II, Section 19 provides: "No bill shall embrace more than one subject, and that shall be expressed in the title." The first part of Section 19 is the
"one subject" requirement; the second part is the "subject-in-title" requirement. The Washington
Supreme Court long ago determined that Section 19 applies to initiatives and that initiatives
passed by a vote of the people must contain only one subject. The "one subject" requirement
prevents a voter from having to vote for something the voter does not want, in order to get
something the voter wants. The Washington Supreme Court has repeatedly held that multiple
unrelated subjects in an initiative violates Section 19 and is unconstitutional. The following |

subjects are among the many contained in the 20-plus pages of Initiative 2066: (1) providing
natural gas to homes and businesses, (2) limiting the authority of agencies to control air
pollution, and (3) changing building energy efficiency standards. Because these different
subjects are not related to each other, I-2066 is unconstitutional under Section 19.

Attorney General Press Release:

FOR IMMEDIATE RELEASE:
May 28 2025

SEATTLE — Attorney General Nick Brown issued the following statement today after filing an appeal of a King County Superior Court's ruling on Initiative-2066 to the Washington state Supreme Court:

"While I personally disagreed with I-2066, it was passed by Washington voters and is the law of the state. My job as Attorney General is to enforce and defend the laws of Washington and I will continue to vigorously do so in this case."

FILED
2025 MAY 09 02:36 PM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 24-2-28630-6 SEA

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

CLIMATE SOLUTIONS, et al., Plaintiffs, v. STATE OF WASHINGTON, Defendant, and BUILDING INDUSTRY ASSOCIATION OF WASHINGTON and ASHLI PENNER, Intervenor-Defendants.	No. 24-2-28630-6 SEA ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' CROSS-MOTIONS FOR SUMMARY JUDGMENT

I. Introduction & Summary of the Court's Ruling

A lawsuit was filed challenging the constitutionality of Initiative 2066. The ballot **title** of Initiative 2066 reads:

> Initiative Measure No. 2066 concerns regulating energy services, including natural gas and electrification. This measure would repeal or prohibit certain laws and regulations that discourage natural gas use and/or promote electrification, and require certain utilities and local governments to provide natural gas to eligible customers.

The actual initiative itself is over 20 pages long. *See* Attachment A (Full text of Initiative 2066).

The Court presumes that Initiative 2066 is constitutional; plaintiffs have the burden to demonstrate its unconstitutionality beyond a reasonable doubt. *Lee v. State*, 185 Wn.2d 608, 619, 374 P.3d 157, 164 (2016); *Amalgamated Transit Union Local 587 (ATU) v. State*, 142 Wn.2d 183, 205, 11 P.3d 762 (2000). This standard is met if plaintiffs can show that "there is no reasonable doubt that the initiative violates the constitution." *ATU*, 142 Wn.2d at 205; *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998).

The Washington Constitution, **Article II, Section 19** provides: "No bill shall embrace more than one subject, and that shall be expressed in the title." The first part of Section 19 is the "one subject" requirement; the second part is the "subject-in-title" requirement. The Washington Supreme Court long ago determined that Section 19 applies to initiatives and that initiatives passed by a vote of the people must contain only one subject. The "one subject" requirement prevents a voter from having to vote for something the voter **does not want,** in order to get something the voter wants. The Washington Supreme Court has repeatedly held that multiple unrelated subjects in an initiative violates Section 19 and is unconstitutional. The following subjects are among the many contained in the 20-plus pages of Initiative 2066: (1) providing natural gas to homes and businesses, (2) limiting the authority of agencies to control air pollution, and (3) changing building energy efficiency standards. Because these different subjects are not related to each other, I-2066 is unconstitutional under Section 19.

The Washington Constitution, **Article II, Section 37,** provides: "No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." The Washington Supreme Court has held that under Section 37, an initiative must directly set forth the laws that the initiative changes in order for the initiative to be constitutional. In other words, the initiative cannot silently amend state laws without warning the

voter. Here, Initiative 2066 silently amends a host of state laws. Under current law: (1) the Department of Commerce makes energy efficiency recommendations to the Building Code Council; (2) energy conservation in the design of public facilities is required; (3) low cost and long term financing, and other incentives, are available for commercial property owners; and (4) local governments are required to develop comprehensive plans that reduce greenhouse gas emissions. These laws are all silently undone by Initiative 2066. Initiative 2066 is unconstitutional because it silently amends state laws without notice to the voter.

Although the Court has ruled that Initiative 2066 is unconstitutional, **this decision does <u>not</u> ban natural gas.** The issue before the Court is not whether natural gas should be banned or discontinued. This ruling is not about the value or drawbacks of natural gas. Had this initiative simply required that natural gas be provided to homes and businesses, it would have been upheld.

II. Background

In November 2024, Washington voters approved Initiative 2066 ("I-2066") by 51.7% of the vote. Plaintiffs then filed a lawsuit asking that the initiative be declared unconstitutional. Plaintiffs moved for summary judgment arguing that I-2066 is unconstitutional on three separate grounds: (1) that it violates the "single subject" clause of Wash. Const. Art. II, § 19, by including sections that are not "germane" to one another; (2) that it violates the "subject in title" rule of Wash. Const. Art. II, § 19, by not properly conveying the essence of the measure through the title; and (3) that it violates Wash. Const. Art. II, § 37 by silently amending other laws. Defendant State of Washington and Intervenor Defendants Building Industry Association of Washington and Ashli Penner argue that the Initiative's subjects are sufficiently related as to be constitutional, that the title clearly expresses the subject matter, and that it is a "complete act"

that does not violate Art. II, § 37. They filed cross-motions for summary judgment. The parties agree that this case can be decided on summary judgment. Attachment B contains a list of the pleadings reviewed by the Court.

III. Legal Analysis

In approving an initiative, the people exercise the same power as the legislature when enacting a statute. *Wash. Fed'n of State Employees v. State,* 127 Wn.2d 544, 556, 901 P.2d 1028 (1995). Thus, the people's legislative power is subject to the same restraints placed upon the legislature when making laws. *Lee,* 185 Wn.2d at 619; *City of Burien v. Kiga,* 144 Wn.2d 819, 824, 31 P.3d 659 (2001). Even though a majority of voters pass an initiative, it must also comply with Washington's constitution. *Washington Ass'n for Substance Abuse & Violence Prevention (WASAVP) v. State,* 174 Wn.2d 642, 654, 278 P.3d 632 (2012). Courts presume that an initiative is constitutional. *Lee*, 185 Wn.2d at 619. A party challenging the constitutionality of an initiative must demonstrate its unconstitutionality beyond a reasonable doubt. *Id.*; *ATU,* 142 Wn.2d at 205.

A. Article II, § 19 of the Washington Constitution

Article II, § 19 of the Washington Constitution states: "No bill shall embrace more than one subject, and that shall be expressed in the title." The first section is the single subject clause, which applies to initiatives as well as bills. *Lee*, 185 Wn.2d at 620; *Kiga*, 144 Wn.2d at 824-25; *Wash. Fed'n of State Emps.,* 127 Wn.2d at 551-54. This test has two components. The first component requires the subjects of the initiative to be germane to each other, and germane to the initiative's title. *Kiga*, 144 Wn.2d at 826; *ATU*, 142 Wn.2d at 209. The second component requires the subjects of the initiative to be expressed in the ballot title of the initiative. *WASAVP,* 174 Wn.2d at 660. This second component is called the "subject-in-title rule." *Id.* at 654.

1. I-2066 Violates the "Single-Subject" Clause

a. The Subjects of I-2066 Are Not Germane to Each Other

The purpose of the "single subject" clause is "(1) to prevent 'logrolling', or pushing legislation through by attaching it to other necessary or desirable legislation, and (2) to assure that the members of the legislature and the public are generally aware of what is contained in proposed new laws." *Lee*, 185 Wn.2d at 620, *quoting Flanders v. Morris,* 88 Wn.2d 183, 187, 558 P.2d 769 (1977). In deciding whether an initiative violates the single subject clause, a court must first determine if the ballot title is general or restrictive. *Kiga*, 144 Wn.2d at 825; *ATU*, 142 Wn.2d at 207-10. Here, the parties agree that I-2066 has a general title.

After establishing that the initiative has a general title, the Court must determine the "general subject" of the initiative. *Garfield Cnty. Transp. Auth. (GCTA) v. State*, 196 Wn.2d 378, 390, 473 P.3d 1205 (2020); *see also Doriot v. State*, 32 Wn. App. 2d 770, 561 P.3d 1208 (2024). This is a difficult task in the present case because the 20-plus pages of the initiative are so broad and free-ranging that it is extremely difficult to say with precision what the general subject is. That said, the Court concludes that the general subject is both protecting and promoting access to natural gas, and regulating access to gas and electrification services.

When an initiative has a general title, such as here, it "may embrace several incidental subjects so long as there is a rational unity between the operative provisions themselves as well as the general [subject]." *Lee*, 185 Wn.2d at 621; *Kiga*, 144 Wn.2d at 825-26; *ATU*, 142 Wn.2d at 210–11. An initiative can embrace several incidental subjects and not violate the single subject clause if the underlying matters are related through "rational unity." *Kiga*, 144 Wn.2d at 826; *ATU*, 142 Wn.2d at 209. Only where rational unity exists can the court determine that voters "were not required to vote for an unrelated subject of which [they] disapproved in order to pass a

law pertaining to a subject" which the voters supported. *Kiga*, 144 Wn.2d at 826. Rational unity does not exist when the subjects are so unrelated that the court cannot tell which subject was favored by the voters. *Lee*, 185 Wn.2d at 620; *Kiga*, 144 Wn.2d at 825. Another indicator of rational unity is whether the subjects of the legislation have previously been considered together in the same legislative act. *Lee*, 185 Wn.2d at 623; *see also WASAVP*, 174 Wn.2d at 657 ("the legislature's recognition of the relationship between liquor regulation and public welfare supports our finding that these issues share rational unity.").

Several cases from the Washington Supreme Court are instructive.

In *Wash. Toll Bridge Auth. v. State,* 49 Wn.2d 520, 304 P.2d 676 (1956), the Washington Supreme Court struck down an initiative that both empowered a state agency to establish and operate all toll roads and provided for the construction of a specific toll road linking several cities. The Court found these provisions were unrelated and not germane to one another because the initiative addressed both the long-term creation of a state agency as well as road construction, which was a one-time event, narrow in scope. *Id.* at 523–24; *see Kiga*, 144 Wn.2d at 826.

The Washington Supreme Court in *ATU, supra,* declared unconstitutional Initiative 695, which set license tab fees at a specific amount and provided a continuing method of approving future tax increases. The Court found that the subjects were not germane to each other, noting that neither purpose was necessary for the implementation of the other. *ATU*, 142 Wn.2d at 217.

The Washington Supreme Court in *Kiga, supra,* struck down Initiative 722 because the initiative's tax nullification and refund provisions were unnecessary for and entirely unrelated to the initiative's permanent, systemic changes in property tax assessments. The Court reasoned that changing the method of determining property tax did not necessitate refunding all tax increases not approved by voters. *Kiga*, 144 Wn.2d at 826-27.

Most recently, in *GCTA*, *supra,* the Washington Supreme Court invalidated I-976, holding that the directive that Sound Transit retire, defease, or refinance bonds was "not germane" to other provisions that made "significant changes to motor vehicle excise taxes generally." 196 Wn.2d at 393, 397.

Defendants' reliance on *Doriot*, 32 Wn. App. 2d 770, and *In re Boot,* 130 Wn.2d 553, 925 P.2d 964 (1996), is misplaced. In *Doriot*, Division 2 of the Washington Court of Appeals rejected a single subject challenge to a comprehensive bill that addressed the broad, multifaceted issue of "transportation resources." 32 Wn. App. 2d at 783. Similarly, *In re Boot* considered a broad omnibus bill comprehensively addressing "violence prevention." 130 Wn.2d at 568. In each case, the various provisions of the legislation related to the broad, overall general subject. I-2066, however, is not a broad omnibus bill that comprehensively "address[es] a larger subject area." *Id.*; *see also Doriot*, 32 Wn. App. 2d at 782 (distinguishing bill at issue from those in other cases that "were inherently narrower in scope"). I-2066's various provisions – including those limiting the authority of the government to regulate natural gas air pollutants and amending building efficiency standards and decarbonization requirements (which apply to energy sources other than natural gas) – do not relate to each other in the same way that, say, firearms regulation and education do in the context of a bill comprehensively addressing "violence prevention." *In re Boot*, 130 Wn.2d at 565.

Turning to the case at hand, it is abundantly clear that I-2066's multiple subjects are not germane to each other. Sections 2 and 3 of I-2066 require certain utility companies, cities, and towns to furnish natural gas to eligible customers. By contrast, Section 11 of I-2066 provides that air pollution control agencies under the Clean Air Act may not "prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any

building." These provisions are unrelated and not germane to one another. A voter may very well want to have access to natural gas, but at the same time, want the government to regulate natural gas air pollution. In addition, limiting the authority of air pollution control agencies is not necessary to requiring the provision of natural gas by local governments. *See ATU*, 142 Wn.2d at 217 ("neither subject is necessary to implement the other"); *see also Kiga*, 144 Wn.2d at 827.

Another example can be found in Sections 6 through 8, which repeal the requirement that the Energy Code "help achieve the broader goal of building zero fossil fuel greenhouse gas emission homes and buildings," and which also bar the Building Code Council from prohibiting, penalizing, or discouraging the use of gas in buildings. These changes to building efficiency standards (some which concern fossil fuels broadly, not just natural gas) are unrelated and not germane to whether certain local governments should be required to provide natural gas service to homes and businesses. Once again, a voter may want to ensure access to natural gas but at the same time want building-efficiency standards that reduce reliance on fossil fuels.

I-2066's changes to the Decarbonization Act are also not germane or related to requiring that natural gas be provided to eligible customers. Sections 4, 5, and 12 of I-2066 repeal and amend various provisions of the Decarbonization Act, which establishes planning requirements for Puget Sound Energy, Washington's largest utility provider. For instance, Section 12 of I-2066 repeals the requirement that Puget Sound Energy "educate its ratepayers" about available rebates and incentives for energy efficient electric appliances and equipment. This and other amendments to the utility regulatory process (some of which concern all types of energy sources, not just natural gas or even just fossil fuels) presented voters with a distinct policy choice from I-2066's requirement that utility companies, cities, and towns provide natural gas to homes and businesses.

Furthermore, there is no legislative precedent for addressing all of the subjects covered by I-2066 in a single piece of legislation. *See, e.g., Lee*, 185 Wn.2d at 623 (invalidating I-1366 in part because "[s]ponsors point[ed] to no history that the legislature has treated sales tax reductions and constitutional amendments or supermajority requirements together."); *American Hotel & Lodging Association v. City of Seattle*, 6 Wn. App. 2d 928, 947, 432 P.3d 434 (2018) (noting that there is "no legislatively recognized connection" between the various subjects at issue in the initiative).

Although I-2066 clearly violates the one-subject rule of Art. II, § 19, Defendants argue that the Court should simply sever the unconstitutional aspects of the initiative. As *Kiga, supra,* held, this is not possible. If an initiative contains more than one subject, the entire initiative is invalidated because the court is unable to tell which subject had a majority of public support. *Kiga*, 144 Wn.2d at 825; *Power, Inc. v. Huntley,* 39 Wn.2d 191, 200, 235 P.2d 173 (1951). As such, the unconstitutional provisions of I-2066 are not severable.

b. The Subjects of I-2066 Are Not Germane to Its Title

Because the Court has determined that the subjects of I-2066 are not germane to each other, it is unnecessary to consider whether subjects are germane to the title. However, the Court will address this topic for the sake of completeness.

In addition to internal rational unity, an initiative's subjects must also be germane to its "general title," also referred to as the "general subject" of the initiative. *Kiga*, 144 Wn.2d at 826; *ATU*, 142 Wn.2d at 209; *see also GCTA*, 196 Wn.2d at 390. As discussed above, the Court has determined that I-2066's general subject is both protecting and promoting access to natural gas, and regulating access to gas and electrification services.

As with the previous analysis, I-2066's myriad subjects are not germane to even this expansive general subject. For example, I-2066's changes to the Decarbonization Act are not germane to requiring that natural gas be provided to eligible customers. The fact that the initiative would undermine Washington's Clean Air Act and prohibit local authorities from taking measures to reduce greenhouse gases also is not germane to the general subject of the initiative. Therefore, I-2066 also violates Art. II, § 19's requirement that the initiative's subjects be germane to its general subject. Next, the Court will consider whether the subjects of I-2066 are expressed in its title.

2. **The Subjects of I-2066 are Not Expressed in the Title of I-2066**

The purpose of the subject-in-title rule of Art. II, § 19 is "to notify members of the legislature and the public of the subject matter of a measure." *WASAVP,* 174 Wn.2d at 660; *Power, Inc.,* 39 Wn.2d at 198. Courts have recognized the particular importance of this requirement for initiatives, noting that "often voters will not reach the text of a measure or the explanatory statement, but may instead cast their votes based upon the ballot title." *ATU*, 142 Wn.2d at 217; *Wash. Fed'n of State Emps.,* 127 Wn.2d at 553-54. The title of an initiative does not have to provide a "detailed index" to the initiative's contents. *ATU*, 142 Wn.2d at 217; *Wash. Fed'n of State Emps.,* 127 Wn.2d at 555. A measure's title can be broad and general but "the material representations in the title must not be misleading or false, which would thwart the underlying purpose of ensuring that no person may be deceived as to what matters are being legislated upon." *WASAVP,* 174 Wn.2d at 660-61, citing *Howlett v. Cheetham,* 17 Wash. 626, 635, 50 P. 522 (1897) ("[A] title which is misleading or false is not constitutionally framed."). Any objections to the title "must be grave and the conflict between it and the constitution palpable" before a court will hold an act unconstitutional on this basis. *WASAVP,* 174 Wn.2d at

661 (internal quotations omitted). A title must give notice "that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law." *WASAVP,* 174 Wn.2d at 660; *Wash. Fed'n of State Emps.,* 127 Wn.2d at 555; *see also ATU*, 142 Wn.2d at 227 (holding that an initiative violated the subject-in-title rule because the initiative's title did not give notice to voters that the meaning of "tax" in the measure was broader than its common meaning.). The words in a title are construed in their ordinary manner. *WASAVP,* 174 Wn.2d at 662.

The question before the court is whether I-2066's ballot title gives the public proper notice of its contents. The parties agree that this was the ballot title placed before the public:

> Initiative Measure No. 2066 concerns regulating energy services, including natural gas and electrification. This measure would repeal or prohibit certain laws and regulations that discourage natural gas use and/or promote electrification, and require certain utilities and local governments to provide natural gas to eligible customers.

I-2066's title does not apprise a reasonably informed voter of the initiative's contents. For example, the title does not provide sufficient notice that a voter would inquire whether it limits the ability of agencies to regulate air pollution. Nor does it indicate that I-2066 seeks to roll back energy efficiency standards for buildings (affecting all fossil fuels, not just natural gas). Further, several sections of the initiative require local authorities not to discourage the use of "gas" heating, appliances or equipment. The title does not suggest that building code standards pertaining to gas appliances, particularly appliances other than natural gas, may be impacted. The many consequences flowing from the initiative's provisions may indicate that, like the initiative title at issue in *ATU*, the meaning of "energy services, including natural gas and electrification" may be broader than indicated by the common meaning of the words. Because I-2066's title does not mention these subjects, nor prompt inquiry into them, it violates the subject-in-title

requirement of article II, section 19 of the Washington Constitution.

B. Article II, § 37 of the Washington Constitution

Article II, § 37 provides that, "No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." The purpose of Art. II, § 37 is to disclose the effect of new legislation and its impact on existing laws. *WASAVP,* 93 Wn.2d at 39; *State v. Tessema,* 139 Wn. App. 483, 489, 162 P.3d 420 (2007). It is intended to protect the legislature and the public from fraud and deception, and to avoid confusion, ambiguity, and uncertainty. *State ex rel. Gebhardt v. Superior Court for King County,* 15 Wn.2d 673, 685, 131 P.2d 943 (1942). It applies equally to bills and initiatives. *Washington Citizens Action of Washington v. State,* 162 Wn.2d 142, 152, 171 P.3d 486 (2007); *Tessema*, 139 Wn. App. at 489.

An initiative is exempt from the requirements of Art. II, § 37 if it is "complete in itself, independent of prior acts, and stands alone as the law on the particular subject of which it treats." *ATU*, 142 Wn.2d at 246. An act is "not complete" if it "refers to a prior statute which is changed but not repealed by the new act," because then people are "required to read both statutes before the full declaration of the legislative will on the subject can be ascertained." *Id., see also Tessema*, 139 Wn. App. at 490.

This analysis requires a two-part query:

1. Is the new enactment such a complete act that the scope of the rights or duties created or affected by the legislative action can be determined without referring to any other statute or enactment?

2. Would a straightforward determination of the scope of rights or duties under the existing statutes be rendered erroneous by the new enactment?

ATU, 142 Wn.2d at 246; *Washington Educ. Ass'n,* 97 Wn.2d at 903; *Tessema*, 139 Wn. App. at

490.

The first question asks whether the initiative can be understood without reference to any other statutes. *ATU*, 142 Wn.2d at 247; *see also State v. Manussier,* 129 Wn.2d 652, 663, 921 P.2d 473 (1996). If the legislation is complete, the fact that other statutes will be modified or repealed can be determined from the act itself without having to specify which laws would be impacted. "Where the new law is independent, and no further search is required to know the law which the new act covers," the new law is constitutional. *ATU*, 142 Wn.2d at 252.

The second question looks to the impact of the initiative on existing laws. *ATU*, 142 Wn.2d at 246. There is no constitutional violation if the initiative provides a requirement that is not addressed by other laws or supplements those laws. *Id.* at 249; *Tessema*, 139 Wn. App. at 490–91. For this prong, the court must consider whether a straightforward reading of existing law would be erroneous given the language of the initiative. *Associated Gen. Contractors of Washington v. State,* 2 Wn.3d 846, 853–54, 544 P.3d 486 (2024); *El Centro De La Raza v. State,* 192 Wn.2d 103, 129, 428 P.3d 1143 (2018).

It is permissible for an initiative to have undeclared incidental effects on other statutes, provided the other statutes are not modified by implication. *See Tessema*, 139 Wn. App. at 492. For example, in *Tessema*, *supra,* the statutes that were alleged to be modified by the Sentencing Act set out the elements of crimes but did not address the punishment imposed upon conviction. *Id.* The Court held that a "straightforward determination of the scope of rights or duties under existing statutes," such as the substantive criminal statutes, were not changed by the sentencing act. *Id.*

By contrast, in *Washington Education Association, supra,* the Court held that an initiative that imposed limits on public school salaries was unconstitutional because it did not set forth

which existing statutes were amended. 93 Wn.2d at 40. The initiative stated that no school district could grant a salary increase greater than a certain amount, which was found to violate the first prong of the test because in order to understand the effect of the limitation, it was necessary to refer to other statutes that established the powers of the district and the school board to fix employee salaries. *Id.* at 40–41. The Court also found that a "straightforward determination" of the existing statutes pertaining to teacher salaries was "rendered erroneous" by the new legislation. *Id.* at 41. Thus, the measure failed both of Art. II, § 37's prongs. *Id.* at 41; *see also ATU*, 142 Wn.2d at 252.

Turning to the case at hand, as to the first prong, I-2066 is not a complete act because its effects cannot be determined just by reading the initiative. As to the second prong, I-2066 renders a straightforward reading of many existing laws erroneous or untenable. Fundamentally, I-2066 "produces the exact harm Article II, Section 37 attempts to avoid: it requires a thorough search of existing laws in order to understand [its] effect on other provisions of [the] RCW." *El Centro De La Raza,* 192 Wn.2d at 131–32. The following review of state laws makes this clear.

RCW 19.27A.150 requires the Department of Commerce to develop and implement a strategic plan for enhancing energy efficiency in and reducing greenhouse gas emissions from homes, buildings, districts, and neighborhoods. The Department of Commerce's strategic plan must include recommendations to the Building Code Council on energy code upgrades, including identifying financial mechanisms such as tax incentives, rebates, and innovative financing to motivate consumers to take action to increase energy efficiency and their use of onsite renewable energy. Promoting renewable energy may involve suggesting the use of energy resources other than natural gas. Thus, this requirement conflicts with I-2066's mandate that the Energy Code may not in any way "prohibit, penalize, or discourage the use of gas for any form

of heating, or for uses related to any appliance or equipment in any building." A straightforward reading of RCW 19.27A.150 is no longer possible under I-2066. Yet, RCW 19.27A.150 is not mentioned in I-2066. In other words, it is silently amended by I-2066.

Chapter 39.35 RCW pertains to energy conservation in design of public facilities, and contains provisions that are inconsistent with I-2066. The legislative declaration for this chapter states that "it is the public policy of this state to ensure that energy conservation practices, greenhouse gas emissions reduction practices, and renewable energy systems are employed in the design of major publicly owned or leased facilities and that the use of all-electric energy systems . . . is considered." RCW 39.35.020. This conflicts with Sections 6–11 of I-2066, which prohibit discouraging the use of natural gas. A straightforward reading of chapter 39.35 RCW is no longer possible under I-2066 because the legislative declaration is undermined by I-2066. Chapter 39.35 RCW is not mentioned in I-2066 and is therefore silently amended by it.

Chapter 36.165 RCW authorizes counties to promote the replacement of natural gas systems with low-emitting alternatives using a "commercial property assessed clean energy and resiliency" ("C-PACER") program. C-PACER enables commercial property owners to "obtain low-cost, long-term financing" for renewable energy and resiliency improvements, including retrofits that "replac[e] nonrenewable energy" like natural gas "with renewable energy" and "reduce greenhouse gas emissions." RCW 36.165.005, .020. A straightforward reading of many provisions of chapter 36.165 RCW is no longer possible under I-2066 as I-2066 limits counties' authority to incentivize the replacement of natural gas with cleaner systems. I-2066 does not reference this statute.

The Growth Management Act ("GMA") requires that local governments' comprehensive plans include a "greenhouse gas emissions reduction subelement." RCW 36.70A.070(9)(b)(i).

This requirement conflicts with I-2066's provisions preventing local governments from including in their comprehensive plans measures to address greenhouse gas emissions caused by natural gas. *See* Sections 9-11 of the initiative (Section 9 provides: "A city or town shall not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.") Thus, a straightforward interpretation of the GMA is no longer possible under I-2066.

RCW 80.28.460 authorizes gas utilities and others to deploy thermal energy networks in their service territory with approval from the Utilities and Transportation Commission (UTC). The statute authorizes the UTC to approve grants and pilot programs that encourage thermal energy networks, which may incentivize utilities to end gas service to customers. This conflicts with Section 4 of I-2066, which prohibits the UTC from approving a multiyear rate plan that "incentivizes" a gas utility "to terminate natural gas service." I-2066 undermines a straightforward understanding of the UTC's authority under RCW 80.28.460. Although I-2066 references a different subsection of chapter 80.28 RCW, it does not address this one.

Chapter 70A.15 RCW is Washington's Clean Air Act. RCW 70A.15.3000(2)(b) and 70A.15.3050(1) require air pollution control agencies to adopt emissions regulations "no less stringent" than those adopted by the Department of Ecology. Although the Clean Air Act confers authority to regulate air pollution on both Ecology and county air pollution control agencies, Section 11 of I-2066 prohibits "authorit[ies]," defined as county agencies, from enacting regulations that "discourage the use of gas." This section does not apply to Ecology. Thus, under I-2066, Ecology remains free to implement emissions controls that "discourage" the use of gas under any number of the Clean Air Act's authorizing provisions, but county air pollution control agencies are prohibited from enacting either the same rule or a more stringent one. I-2066 thus

creates a conflict among provisions of the Clean Air Act, which renders a straightforward understanding of this law erroneous.

In sum, I-2066 violates Art. II, § 37 by silently amending existing state laws.

CONCLUSION

Based on the foregoing, the Court GRANTS Plaintiffs' Motion for Summary Judgment, DENIES Defendant State of Washington's Cross-Motion for Summary Judgment, and DENIES Intervenor-Defendants Building Industry Association of Washington and Ashli Penner's Cross-Motion for Summary Judgment. Initiative 2066 is unconstitutional under Article II, §19 and Article II, §37 of the Washington Constitution. Because I-2066's invalid provisions are not severable, it is void in its entirety. Defendant State of Washington, its officials, employees, agents, and all persons in active concert or participation with Defendant State of Washington, are enjoined from implementing or enforcing I-2066.

ORDERED this 9th day of May, 2025.

Sandra Widlan
Judge, King County Superior Court

ATTACHMENT A

Initiative Measure No. 2066

Filed April 5, 2024

AN ACT Relating to promoting energy choice by protecting access to gas for Washington homes and businesses; amending RCW 80.28.110, 35.92.050, 80.28.425, 80.--.---, 19.27A.020, 19.27A.025, and 19.27A.045; adding a new section to chapter 35.21 RCW; adding a new section to chapter 36.01 RCW; adding a new section to chapter 70A.15 RCW; creating a new section; repealing RCW 80.--.---, 80.--.---, and 80.--.---; and repealing 2024 c 351 ss 1 and 21 (uncodified).

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) The people find that having access to natural gas enhances the safety, welfare, and standard of living of all people in Washington. The people further find that preserving Washington's gas infrastructure and systems will promote energy choice, security, independence, and resilience throughout the state. Natural gas is a convenient and important necessity because it: Serves as a backup source of energy during emergencies; provides consumers with more options for heating, sanitation, cooking and food preparation, and other household activities, helping to control their costs; and sustains essential businesses, such as restaurants.

(2) Unfortunately, due to recent policy and corporate decisions, the people's ability to make choices about their energy sources is at risk. Therefore, the people determine that access to gas and gas appliances must be preserved for Washington homes and businesses, by strengthening utilities' obligation to provide natural gas to customers who want it, and by preventing regulatory actions that will limit access to gas.

Sec. 2. RCW 80.28.110 and 2024 c 348 s 6 are each amended to read as follows:

(1) Every gas company, electrical company, wastewater company, or water company, engaged in the sale and distribution of gas, electricity, or water, or the provision of wastewater company services, shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available gas, electricity, wastewater company services, and water as demanded, except that: ((~~(1)~~)) (a) A water company may not furnish water contrary to the provisions of water system plans approved under chapter 43.20 or 70A.100 RCW; ((~~(2)~~)) (b) wastewater companies may not provide services contrary to the approved general sewer plan; and ((~~(3)~~)) (c) exclusively upon petition of a gas company, and subject to the commission's approval, a gas company's obligation to serve gas to customers that have access to the gas company's thermal energy network may be met by providing thermal energy through a thermal energy network.

(2) Every gas company or large combination utility shall provide natural gas to all persons and corporations in their service area or territory that demand, apply for, and are reasonably entitled to receive, natural gas under this section, even if other energy services or energy sources may be available.

Sec. 3. RCW 35.92.050 and 2022 c 292 s 405 are each amended to read as follows:

(1) A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain, and operate works, plants, facilities for the purpose of furnishing the city or town and its inhabitants, and any other persons, with gas, electricity, green electrolytic hydrogen as defined in RCW 54.04.190, renewable hydrogen as defined in RCW 54.04.190, and other means of power and facilities for lighting, including streetlights as an integral utility service incorporated within general rates, heating, fuel,

and power purposes, public and private, with full authority to regulate and control the use, distribution, and price thereof, together with the right to handle and sell or lease, any meters, lamps, motors, transformers, and equipment or accessories of any kind, necessary and convenient for the use, distribution, and sale thereof; authorize the construction of such plant or plants by others for the same purpose, and purchase gas, electricity, or power from either within or without the city or town for its own use and for the purpose of selling to its inhabitants and to other persons doing business within the city or town and regulate and control the use and price thereof.

(2) A city or town that furnishes natural gas shall provide natural gas to those inhabitants that demand, apply for, and are reasonably entitled to receive, natural gas under this section, even if other energy services or energy sources may be available.

Sec. 4. RCW 80.28.425 and 2024 c 351 s 18 are each amended to read as follows:

(1) Beginning January 1, 2022, every general rate case filing of a gas or electrical company must include a proposal for a multiyear rate plan as provided in this chapter. The commission may, by order after an adjudicative proceeding as provided by chapter 34.05 RCW, approve, approve with conditions, or reject, a multiyear rate plan proposal made by a gas or electrical company or an alternative proposal made by one or more parties, or any combination thereof. The commission's consideration of a proposal for a multiyear rate plan is subject to the same standards applicable to other rate filings made under this title, including the public interest and fair, just, reasonable, and sufficient rates. In determining the public interest, the commission may consider such factors including, but not limited to, environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the

rates, services, and practices of a gas or electrical company regulated by the commission.

(2) The commission may approve, disapprove, or approve with modifications any proposal to recover from ratepayers up to five percent of the total revenue requirement approved by the commission for each year of a multiyear rate plan for tariffs that reduce the energy burden of low-income residential customers including, but not limited to: (a) Bill assistance programs; or (b) one or more special rates. For any multiyear rate plan approved under this section resulting in a rate increase, the commission must approve an increase in the amount of low-income bill assistance to take effect in each year of the rate plan where there is a rate increase. At a minimum, the amount of such low-income assistance increase must be equal to double the percentage increase, if any, in the residential base rates approved for each year of the rate plan. The commission may approve a larger increase to low-income bill assistance based on an appropriate record.

(3)(a) If it approves a multiyear rate plan, the commission shall separately approve rates for each of the initial rate year, the second rate year and, if applicable, the third rate year, and the fourth rate year.

(b) The commission shall ascertain and determine the fair value for rate-making purposes of the property of any gas or electrical company that is or will be used and useful under RCW 80.04.250 for service in this state by or during each rate year of the multiyear rate plan. For the initial rate year, the commission shall, at a minimum, ascertain and determine the fair value for rate-making purposes of the property of any gas or electrical company that is used and useful for service in this state as of the rate effective date. The commission may order refunds to customers if property expected to be used and useful by the rate effective date when the commission approves a multiyear rate plan is in fact not used and useful by such a date.

(c) The commission shall ascertain and determine the revenues and operating expenses for rate-making purposes of any gas or electrical company for each rate year of the multiyear rate plan.

(d) In ascertaining and determining the fair value of property of a gas or electrical company pursuant to (b) of this subsection and projecting the revenues and operating expenses of a gas or electrical company pursuant to (c) of this subsection, the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates.

(e) If the commission approves a multiyear rate plan with a duration of three or four years, then the electrical company must update its power costs as of the rate effective date of the third rate year. The proceeding to update the electrical company's power costs is subject to the same standards that apply to other rate filings made under this title.

(4) Subject to subsection (5) of this section, the commission may by order establish terms, conditions, and procedures for a multiyear rate plan and ensure that rates remain fair, just, reasonable, and sufficient during the course of the plan.

(5) Notwithstanding subsection (4) of this section, a gas or electrical company is bound by the terms of the multiyear rate plan approved by the commission for each of the initial rate year and the second rate year. A gas or electrical company may file a new multiyear rate plan in accordance with this section for the third rate year and fourth rate year, if any, of a multiyear rate plan.

(6) If the annual commission basis report for a gas or electrical company demonstrates that the reported rate of return on rate base of the company for the 12-month period ending as of the end of the period for which the annual commission basis report is filed is more than .5 percent higher than the rate of return authorized by the commission in the multiyear rate plan for such a company, the company shall defer all revenues that are in excess of .5 percent higher than the rate of return authorized by the

commission for refunds to customers or another determination by the commission in a subsequent adjudicative proceeding. If a multistate electrical company with fewer than 250,000 customers in Washington files a multiyear rate plan that provides for no increases in base rates in consecutive years beyond the initial rate year, the commission shall waive the requirements of this subsection provided that such a waiver results in just and reasonable rates.

(7) The commission must, in approving a multiyear rate plan, determine a set of performance measures that will be used to assess a gas or electrical company operating under a multiyear rate plan. These performance measures may be based on proposals made by the gas or electrical company in its initial application, by any other party to the proceeding in its response to the company's filing, or in the testimony and evidence admitted in the proceeding. In developing performance measures, incentives, and penalty mechanisms, the commission may consider factors including, but not limited to, lowest reasonable cost planning, affordability, increases in energy burden, cost of service, customer satisfaction and engagement, service reliability, clean energy or renewable procurement, conservation acquisition, demand side management expansion, rate stability, timely execution of competitive procurement practices, attainment of state energy and emissions reduction policies, rapid integration of renewable energy resources, and fair compensation of utility employees.

(8) Nothing in this section precludes any gas or electrical company from making filings required or permitted by the commission.

(9) The commission shall align, to the extent practical, the timing of approval of a multiyear rate plan of an electrical company submitted pursuant to this section with the clean energy implementation plan of the electrical company filed pursuant to RCW 19.405.060.

(10) The provisions of this section may not be construed to limit the existing rate-making authority of the commission.

(11) The commission may require a large combination utility as defined in RCW 80.--.--- (section 2, chapter 351, Laws of 2024) to incorporate the requirements of this section into an integrated system plan established under RCW 80.--.--- (section 3, chapter 351, Laws of 2024).

(12) The commission shall not approve, or approve with conditions, a multiyear rate plan that requires or incentivizes a gas company or large combination utility to terminate natural gas service to customers.

(13) The commission shall not approve, or approve with conditions, a multiyear rate plan that authorizes a gas company or large combination utility to require a customer to involuntarily switch fuel use either by restricting access to natural gas service or by implementing planning requirements that would make access to natural gas service cost-prohibitive.

Sec. 5. RCW 80.--.--- and 2024 c 351 s 3 are each amended to read as follows:

(1) The legislature finds that large combination utilities are subject to a range of reporting and planning requirements as part of the clean energy transition. The legislature further finds that current natural gas integrated resource plans under development might not yield optimal results for timely and cost-effective decarbonization. To reduce regulatory barriers, achieve equitable and transparent outcomes, and integrate planning requirements, the commission may consolidate a large combination utility's planning requirements for both gas and electric operations, including consolidation into a single integrated system plan that is approved by the commission.

(2)(a) By July 1, 2025, the commission shall complete a rule-making proceeding to implement consolidated planning requirements for gas and electric services for large combination utilities that may include plans required under: (i) RCW 19.280.030; (ii) RCW 19.285.040; (iii) RCW 19.405.060; (iv) RCW 80.28.380; (v) RCW

80.28.365; (vi) RCW 80.28.425; and (vii) RCW 80.28.130. The commission may extend the rule-making proceeding for 90 days for good cause shown. The large combination utilities' filing deadline required in subsection (4) of this section will be extended commensurate to the rule-making extension period set by the commission. Subsequent planning requirements for future integrated system plans must be fulfilled on a timeline set by the commission. Large combination utilities that file integrated system plans are no longer required to file separate plans that are required in an integrated system plan. The statutorily required contents of any plan consolidated into an integrated system plan must be met by the integrated system plan.

(b) In its order adopting rules or issuing a policy statement approving the consolidation of planning requirements, the commission shall include a compliance checklist and any additional guidance that is necessary to assist the large combination utility in meeting the minimum requirements of all relevant statutes and rules.

(3) Upon request by a large combination utility, the commission may issue an order extending the filing and reporting requirements of a large combination utility under RCW 19.405.060 and 19.280.030, and requiring the large combination utility to file an integrated system plan pursuant to subsection (4) of this section if the commission finds that the large combination utility has made public a work plan that demonstrates reasonable progress toward meeting the standards under RCW 19.405.040(1) and 19.405.050(1) and achieving equity goals. The commission's approval of an extension of filing and reporting requirements does not relieve the large combination utility from the obligation to demonstrate progress towards meeting the standards under RCW 19.405.040(1) and 19.405.050(1) and the interim targets approved in its most recent clean energy implementation plan. Commission approval of an extension under this section fulfills the large combination ((~~utilities~~)) utility's statutory filing deadlines under RCW 19.405.060(1).

(4) By January 1, 2027, and on a timeline set by the commission thereafter, large combination utilities shall file an integrated system plan demonstrating how the large combination utilities' plans are consistent with the requirements of this chapter and any rules and guidance adopted by the commission, and which:

(a) Achieve the obligations of all plans consolidated into the integrated system plan;

(b) Provide a range of forecasts, for at least the next 20 years, of projected customer demand that takes into account econometric data and addresses changes in the number, type, and efficiency of customer usage;

(c) Include scenarios that achieve emissions reductions for both gas and electric operations equal to at least their proportional share of emissions reductions required under RCW 70A.45.020;

(d) Include scenarios with emissions reduction targets for both gas and electric operations for each emissions reduction period that account for the interactions between gas and electric systems;

(e) Achieve two percent of electric load annually with conservation and energy efficiency resources, unless the commission finds that a higher target is cost-effective. However, the commission may accept a lower level of achievement if it determines that the requirement in this subsection (4)(e) is neither technically nor commercially feasible during the applicable emissions reduction period;

(f) Assess commercially available conservation and efficiency resources, including demand response and load management, to achieve the conservation and energy efficiency requirements in (e) of this subsection, and as informed by the assessment for conservation potential under RCW 19.285.040 for the planning horizon consistent with (b) of this subsection. Such an assessment may include, as appropriate, opportunities for development of combined heat and power as an energy and capacity resource, demand response and load management programs, and currently employed and new policies and programs needed to obtain the conservation and efficiency resources.

The value of recoverable waste heat resulting from combined heat and power must be reflected in analyses of cost-effectiveness under this subsection;

(g) Achieve annual demand response and demand flexibility equal to or greater than 10 percent of winter and summer peak electric demand, unless the commission finds that a higher target is cost-effective. However, the commission may accept a lower level of achievement if it determines that the requirement in this subsection (4)(g) is neither technically nor commercially feasible during the applicable emissions reduction period;

(h) ((~~Achieve all cost-effective electrification of end uses currently served by natural gas identified through an assessment of alternatives to known and planned gas infrastructure projects, including nonpipeline alternatives, rebates and incentives, and geographically targeted electrification;~~

~~(i)~~)) Include low-income electrification programs that must:

(i) Include rebates and incentives to low-income customers and customers experiencing high energy burden for the deployment of high-efficiency electric-only heat pumps in homes and buildings currently heating with wood, oil, propane, electric resistance, or gas;

(ii) Provide demonstrated material benefits to low-income participants including, but not limited to, decreased energy burden, the addition of air conditioning, and backup heat sources using natural gas or energy storage systems, if necessary to protect health and safety in areas with frequent outages, or improved indoor air quality;

(iii) Enroll customers in energy assistance programs or provide bill assistance;

(iv) ((~~Provide dedicated funding for electrification readiness;~~

~~(v)~~)) Include low-income customer protections to mitigate energy burden, if electrification measures will increase a low-income participant's energy burden; and

((~~(vi)~~)) (v) Coordinate with community-based organizations in the ((~~gas or electrical company's~~)) large combination utility's service territory including, but not limited to, grantees of the department of commerce, community action agencies, and community-based nonprofit organizations, to remove barriers and effectively serve low-income customers;

((~~(j)~~)) (i) Accept as proof of eligibility for energy assistance enrollment in any means-tested public benefit, or low-income energy assistance program, for which eligibility does not exceed the low-income definition set by the commission pursuant to RCW 19.405.020;

((~~(k) Assess the potential for geographically targeted electrification including, but not limited to, in overburdened communities, on gas plant that is fully depreciated or gas plant that is included in a proposal for geographically targeted electrification that requires accelerating depreciation pursuant to RCW 80.--.---(1) (section 7(1), chapter 351, Laws of 2024) for the gas plant subject to such electrification proposal;~~

~~(l)~~)) (j) Assess commercially available supply side resources, including a comparison of the benefits and risks of purchasing electricity or gas or building new resources;

((~~(m) Assess nonpipeline alternatives, including geographically targeted electrification and demand response, as an alternative to replacing aging gas infrastructure or expanded gas capacity. Assessments must involve, at a minimum:~~

~~(i) Identifying all known and planned gas infrastructure projects, including those without a fully defined scope or cost estimate, for at least the 10 years following the filing;~~

~~(ii) Estimating programmatic expenses of maintaining that portion of the gas system for at least the 10 years following the filing; and~~

~~(iii) Ranking all gas pipeline segments for their suitability for nonpipeline alternatives;~~

~~(n)~~)) (k) Assess distributed energy resources that meets the requirements of RCW 19.280.100;

((~~(o)~~)) (l) Provide an assessment and 20-year forecast of the availability of and requirements for regional supply side resource and delivery system capacity to provide and deliver electricity and gas to the large combination utility's customers and to meet, as applicable, the requirements of chapter 19.405 RCW and the state's greenhouse gas emissions reduction limits in RCW 70A.45.020. The delivery system assessment must identify the large combination utility's expected needs to acquire new long-term firm rights, develop new, or expand or upgrade existing, delivery system facilities consistent with the requirements of this section and reliability standards and take into account opportunities to make more effective use of existing delivery facility capacity through improved delivery system operating practices, conservation and efficiency resources, distributed energy resources, demand response, grid modernization, nonwires solutions, and other programs if applicable;

((~~(p)~~)) (m) Assess methods, commercially available technologies, or facilities for integrating renewable resources and nonemitting electric generation including, but not limited to, battery storage and pumped storage, and addressing overgeneration events, if applicable to the large combination utility's resource portfolio;

((~~(q)~~)) (n) Provide a comparative evaluation of supply side resources, delivery system resources, and conservation and efficiency resources using lowest reasonable cost as a criterion;

((~~(r)~~)) (o) Include a determination of resource adequacy metrics for the integrated system plan consistent with the forecasts;

((~~(s)~~)) (p) Forecast distributed energy resources that may be installed by the large combination utility's customers and an assessment of their effect on the large combination utility's load and operations;

((~~(t)~~)) (q) Identify an appropriate resource adequacy requirement and measurement metric consistent with prudent utility practice in implementing RCW 19.405.030 through 19.405.050;

((~~(u)~~)) (r) Integrate demand forecasts, resource evaluations, and resource adequacy requirements into a long-range assessment describing the mix of supply side resources and conservation and efficiency resources that will meet current and projected needs, including mitigating overgeneration events and implementing RCW 19.405.030 through 19.405.050, at the lowest reasonable cost and risk to the large combination utility and its customers, while maintaining and protecting the safety, reliable operation, and balancing of the energy system of the large combination utility;

((~~(v)~~)) (s) Include an assessment, informed by the cumulative impact analysis conducted under RCW 19.405.140, of: Energy and nonenergy benefits and the avoidance and reductions of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits, costs, and risks; and energy security and risk;

((~~(w)~~)) (t) Include a 10-year clean energy action plan for implementing RCW 19.405.030 through 19.405.050 at the lowest reasonable cost, and at an acceptable resource adequacy standard;

((~~(x)~~)) (u) Include an analysis of how the integrated system plan accounts for:

(i) Model load forecast scenarios that consider the anticipated levels of zero emissions vehicle use in a large combination utility's service area, including anticipated levels of zero emissions vehicle use in the large combination utility's service area provided in RCW 47.01.520, if feasible;

(ii) Analysis, research, findings, recommendations, actions, and any other relevant information found in the electrification of transportation plans submitted under RCW 80.28.365; and

(iii) Assumed use case forecasts and the associated energy impacts, which may use the forecasts generated by the mapping and forecasting tool created in RCW 47.01.520;

((~~(y)~~)) (v) Establish that the large combination utility has:

(i) Consigned to auction for the benefit of ratepayers the minimum required number of allowances allocated to the large

combination utility for the applicable compliance period pursuant to RCW 70A.65.130, consistent with the climate commitment act, chapter 70A.65 RCW, and rules adopted pursuant to the climate commitment act; and

(ii) Prioritized, to the maximum extent permissible under the climate commitment act, chapter 70A.65 RCW, revenues derived from the auction of allowances allocated to the utility for the applicable compliance period pursuant to RCW 70A.65.130, first to programs that eliminate the cost burden for low-income ratepayers, such as bill assistance, or nonvolumetric credits on ratepayer utility bills, ((~~or electrification programs,~~)) and second to ((~~electrification~~)) programs benefiting residential and small commercial customers;

((~~(z)~~)) (w) Propose an action plan outlining the specific actions to be taken by the large combination utility in implementing the integrated system plan following submission; and

((~~(aa)~~)) (x) Report on the large combination utility's progress towards implementing the recommendations contained in its previously filed integrated system plan.

(5) ((~~In evaluating the lowest reasonable cost of decarbonization measures included in an integrated system plan, large combination utilities must apply a risk reduction premium that must account for the applicable allowance ceiling price approved by the department of ecology pursuant to the climate commitment act, chapter 70A.65 RCW. For the purpose of this chapter, the risk reduction premium is necessary to ensure that a large combination utility is making appropriate long-term investments to mitigate against the allowance and fuel price risks to customers of the large combination utility.~~

~~(6)~~)) The clean energy action plan must:

(a) Identify and be informed by the large combination utility's 10-year cost-effective conservation potential assessment as determined under RCW 19.285.040, if applicable;

(b) Establish a resource adequacy requirement;

(c) Identify the potential cost-effective demand response and load management programs that may be acquired;

(d) Identify renewable resources, nonemitting electric generation, and distributed energy resources that may be acquired and evaluate how each identified resource may be expected to contribute to meeting the large combination utility's resource adequacy requirement;

(e) Identify any need to develop new, or expand or upgrade existing, bulk transmission and distribution facilities and document existing and planned efforts by the large combination utility to make more effective use of existing transmission capacity and secure additional transmission capacity consistent with the requirements of subsection (4)((~~(e)~~)) (1) of this section; and

(f) Identify the nature and possible extent to which the large combination utility may need to rely on alternative compliance options under RCW 19.405.040(1)(b), if appropriate.

((~~(7)~~)) (6) A large combination utility shall consider the social cost of greenhouse gas emissions, as determined by the commission pursuant to RCW 80.28.405, when developing integrated system plans and clean energy action plans. A large combination utility must incorporate the social cost of greenhouse gas emissions as a cost adder when:

(a) Evaluating and selecting conservation policies, programs, and targets;

(b) Developing integrated system plans and clean energy action plans; and

(c) Evaluating and selecting intermediate term and long-term resource options.

((~~(8)~~)) (7) Plans developed under this section must be updated on a regular basis, on intervals approved by the commission.

((~~(9)~~)) (8)(a) To maximize transparency, the commission may require a large combination utility to make the utility's data input files available in a native format. Each large combination utility shall publish its final plan either as part of an annual report or

as a separate document available to the public. The report may be in an electronic form.

(b) Nothing in this subsection limits the protection of records containing commercial information under RCW 80.04.095.

((~~(10)~~)) (9) The commission shall establish by rule a cost test for emissions reduction measures achieved by large combination utilities to comply with state clean energy and climate policies. The cost test must be used by large combination utilities under this chapter for the purpose of determining the lowest reasonable cost of decarbonization and low-income electrification measures in integrated system plans, at the portfolio level, and for any other purpose determined by the commission by rule.

((~~(11)~~)) (10) The commission must approve, reject, or approve with conditions an integrated system plan within 12 months of the filing of such an integrated system plan. The commission may for good cause shown extend the time by 90 days for a decision on an integrated system plan filed on or before January 1, 2027, as such date is extended pursuant to subsection (2)(a) of this section.

((~~(12)~~)) (11) In determining whether to approve the integrated system plan, reject the integrated system plan, or approve the integrated system plan with conditions, the commission must evaluate whether the plan is in the public interest, and includes the following:

(a) The equitable distribution and prioritization of energy benefits and reduction of burdens to vulnerable populations, highly impacted communities, and overburdened communities;

(b) Long-term and short-term public health, economic, and environmental benefits and the reduction of costs and risks;

(c) Health and safety concerns;

(d) Economic development;

(e) Equity;

(f) Energy security and resiliency;

(g) Whether the integrated system plan:

(i) Would achieve a proportional share of reductions in greenhouse gas emissions for each emissions reduction period on the gas and electric systems;

(ii) Would achieve the energy efficiency and demand response targets in subsection (4)(e) and (g) of this section;

(iii) ((~~Would achieve cost-effective electrification of end uses as required by subsection (4)(h) of this section;~~

~~(iv)~~)) Results in a reasonable cost to customers, and projects the rate impacts of specific actions, programs, and investments on customers;

((~~(v)~~)) (iv) Would maintain system reliability and reduces long-term costs and risks to customers;

((~~(vi)~~)) (v) Would lead to new construction career opportunities ((~~and prioritizes a transition of natural gas and electricity utility~~)) for workers to perform work on construction and maintenance of new and existing renewable energy infrastructure; and

((~~(vii)~~)) (vi) Describes specific actions that the large combination utility plans to take to achieve the requirements of the integrated system plan.

(12) The commission shall not approve, or approve with conditions, an integrated system plan that requires or incentivizes a large combination utility to terminate natural gas service to customers.

(13) The commission shall not approve, or approve with conditions, an integrated system plan that authorizes a large combination utility to require a customer to involuntarily switch fuel use either by restricting access to natural gas service or by implementing planning requirements that would make access to natural gas service cost-prohibitive.

Sec. 6. RCW 19.27A.020 and 2018 c 207 s 7 are each amended to read as follows:

(1) The state building code council in the department of enterprise services shall adopt rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to adopt rules to be known as the Washington state energy code. The Washington state energy code shall be designed to:

(a) Construct increasingly energy efficient homes and buildings ((~~that help achieve the broader goal of building zero fossil-fuel greenhouse gas emission homes and buildings~~)) by the year 2031;

(b) Require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework; and

(c) Allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

(3) The Washington state energy code may not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

(4) The Washington state energy code shall take into account regional climatic conditions. One climate zone includes: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Skamania, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties. The other climate zone includes all other counties not listed in this subsection ((~~(3)~~)) (4). The assignment of a county to a climate zone may not be changed by adoption of a model code or rule. Nothing in this section prohibits the council from adopting the same rules or standards for each climate zone.

((~~(4)~~)) (5) The Washington state energy code for residential buildings shall be the 2006 edition of the Washington state energy code, or as amended by rule by the council.

((~~(5)~~)) (6) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 2006 edition, or as amended by the council by rule.

((~~(6)~~)) (7)(a) Except as provided in (b) of this subsection, the Washington state energy code for residential structures shall preempt the residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may not subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990.

((~~(7)~~)) (8) The state building code council shall consult with the department of enterprise services as provided in RCW 34.05.310 prior to publication of proposed rules. The director of the department of enterprise services shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

((~~(8)~~)) (9) The state building code council shall evaluate and consider adoption of the international energy conservation code in Washington state in place of the existing state energy code.

((~~(9)~~)) (10) The definitions in RCW 19.27A.140 apply throughout this section.

Sec. 7. RCW 19.27A.025 and 2024 c 170 s 4 are each amended to read as follows:

(1) The minimum state energy code for new and renovated nonresidential buildings, as specified in this chapter, shall be the Washington state energy code, 1986 edition, as amended. The state building code council may, by rule adopted pursuant to chapter 34.05 RCW, RCW 19.27.031, and RCW 19.27.---, 19.27.---, and 19.27.---

(sections 6, 7, and 8, chapter 170, Laws of 2024), amend that code's requirements for new nonresidential buildings provided that:

(a) Such amendments increase the energy efficiency of typical newly constructed nonresidential buildings; and

(b) Any new measures, standards, or requirements adopted must be technically feasible, commercially available, and developed to yield the lowest overall cost to the building owner and occupant while meeting the energy reduction goals established under RCW 19.27A.160.

(2) In considering amendments to the state energy code for nonresidential buildings, the state building code council shall establish and consult with a technical advisory group in accordance with RCW 19.27.--- (section 7, chapter 170, Laws of 2024) including representatives of appropriate state agencies, local governments, general contractors, building owners and managers, design professionals, utilities, and other interested and affected parties.

(3) Decisions to amend the Washington state energy code for new nonresidential buildings shall be made prior to December 15th of any year and shall not take effect before the end of the regular legislative session in the next year. Any disputed provisions within an amendment presented to the legislature shall be approved by the legislature before going into effect. A disputed provision is one which was adopted by the state building code council with less than a two-thirds vote of the voting members. Substantial amendments to the code shall be adopted no more frequently than every three years except as allowed in RCW 19.27.031 and RCW 19.27.--- (section 6, chapter 170, Laws of 2024).

(4) When amending a code under this section, the state building code council shall not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

Sec. 8. RCW 19.27A.045 and 2024 c 170 s 5 are each amended to read as follows:

(1) The state building code council shall maintain the state energy code for residential structures in a status which is consistent with the state's interest as set forth in section 1, chapter 2, Laws of 1990. In maintaining the Washington state energy code for residential structures, beginning in 1996 the council shall review the Washington state energy code every three years. After January 1, 1996, by rule adopted pursuant to chapter 34.05 RCW, RCW 19.27.031, and RCW 19.27.---, 19.27.---, and 19.27.--- (sections 6, 7, and 8, chapter 170, Laws of 2024), the council may amend any provisions of the Washington state energy code to increase the energy efficiency of newly constructed residential buildings. Decisions to amend the Washington state energy code for residential structures shall be made prior to December 1st of any year and shall not take effect before the end of the regular legislative session in the next year.

(2) When amending a code under this section, the state building code council shall not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

NEW SECTION. **Sec. 9.** A new section is added to chapter 35.21 RCW to read as follows:

A city or town shall not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

NEW SECTION. **Sec. 10.** A new section is added to chapter 36.01 RCW to read as follows:

A county shall not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

NEW SECTION. **Sec. 11.** A new section is added to chapter 70A.15 RCW to read as follows:

An authority shall not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

NEW SECTION. **Sec. 12.** The following acts or parts of acts are each repealed:

(1) 2024 c 351 s 1 (uncodified);

(2) RCW 80.--.--- and 2024 c 351 s 7;

(3) RCW 80.--.--- and 2024 c 351 s 8;

(4) RCW 80.--.--- and 2024 c 351 s 10; and

(5) 2024 c 351 s 21 (uncodified).

NEW SECTION. **Sec. 13.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

--- END ---

ATTACHMENT B

The following is a list of the pleadings that the Court considered in ruling on Plaintiffs' Motion for Summary Judgment, Defendant State of Washington's ("State's") Cross-Motion for Summary Judgment, and Intervenor-Defendants Building Industry Association of Washington and Ashli Penner's ("BIAW's") Cross-Motion for Summary Judgment.

1. Plaintiffs' Motion for Summary Judgment;
2. Declaration of Ardel Jala in Support of Plaintiffs' Motion;
3. Declaration of Christine Bunch in Support of Plaintiffs' Motion;
4. Declaration of Kai A. Smith in Support of Plaintiffs' Motion;
5. Defendant State of Washington's Response to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment;
6. Declaration of Michelle Saperstein in Support of Defendant State of Washington's Cross-Motion;
7. Declaration of Crystal Oliver in Support of Defendant State of Washington's Cross-Motion;
8. Intervenor-Defendants BIAW and Ashli Penner's Response to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment;
9. Declaration of Devon McCurdy in Support of Intervenor-Defendants' Cross-Motion;
10. Declaration of Ashli Penner in Support of Intervenor-Defendants' Cross-Motion;
11. Plaintiffs' Reply in Support of Plaintiffs' Motion for Summary Judgment and Responses to Defendants' Cross-Motions for Summary Judgment;
12. Second Declaration of Kai A. Smith in Support of Plaintiffs' Reply in Support of Plaintiffs' Motion and Response to Defendants' Cross Motions;

13. Defendant State of Washington's Reply in Support of Defendant's Cross-Motion for Summary Judgment; and
14. Intervenor-Defendants BIAW and Ashli Penner's Reply in Support of Intervenor-Defendants' Cross-Motion for Summary Judgment.

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