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March 5, 2019

MEMORANDUM

TO: Power Committee Members

FROM: Tina Jayaweera, Senior Analyst; Kevin Smit, Senior Analyst; John Shurts, General Counsel; Andrea Goodwin, Senior Counsel

SUBJECT: Preliminary discussion of Council response to the DOE Notice of Proposed Rulemaking (NOPR) for General Service Lamps

BACKGROUND:

Presenters: Kevin Smit, John Shurts

Summary:

Pursuant to the Energy Policy and Conservation Act (EPCA), the US Department of Energy (DOE) is responsible for setting and enforcing energy conservation standards for covered products, including general service lamps (GSL).

In January 2017, DOE adopted a final rule expanding the definition of GSLs to include a wider range of lightbulbs, effective January 1, 2020. In February 2019, DOE issued a Notice of Proposed Rulemaking (NOPR) proposing to rescind the definitions adopted in the January 2017 rule asserting that the legal basis underlying those revised definitions misconstrued existing law. Withdrawal of the January 2017 definitions will, in effect, reduce the number of lightbulbs subject to stricter efficiency standards, specifically eliminating EPCA's 45 lumens per watt statutory backstop requirement for some general service incandescent lamps, including reflector bulbs and decorative light bulbs, that also takes effect beginning January 1, 2020.

Because DOE justifies its proposed rescission of the 2017 rule on the grounds that the definitions exceed what is allowed by the law, we anticipate that most of the comments

to DOE on this NOPR will focus on legal issues, including whether the wider definitions in the January 2017 rule were within the scope of the governing law (as DOE now asserts they were not) and whether the proposed rescission violates the anti-backsliding provision of EPCA. The anti-backsliding provision prohibits DOE from amending any standard in a way that increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. The anti-backsliding provision comes into play, of course, only if the January 2017 rule was indeed within the scope of the governing statute, and only if it can then be established that the January 2017 change in definition in fact constituted a standard that triggers the anti-backsliding provision.

The Council legal staff is not doing its own research and analysis of the legal issues, although we are persuaded by the work of others that DOE is wrong to assert that the 2017 lamp definitions exceeded what is allowed by the law. Power and legal staff together are preparing draft comments on the NOPR. Our plan is not to provide a separate analysis or argument on the underlying legal issues. Instead we will use the comments to join or at least refer to the legal arguments made by others. We intend then to focus the bulk of the Council's comments on the substantial amount of energy efficiency potential that will be lost due to this rule change.

Public comment on the NOPR closes on April 12, 2019. Council staff will provide draft comments for Council approval at the April meeting.

Relevance: Federal standards have been a key delivery mechanism for cost-effective energy savings. The scope and effectiveness of standards processes are of critical importance to Seventh Power Plan efficiency goals.

Workplan: A.1. Conservation