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February 4, 2020

MEMORANDUM

TO: Council Members

FROM: Tina Jayaweera, Andrea Goodwin

SUBJECT: Lighting Standards and Considerations for the 2021 Power Plan

BACKGROUND:

Summary: As Council staff develops the conservation supply curves for a power plan, staff includes in the baseline the federal efficiency standards and state codes that are in effect during the planning process. Staff intends to do the same for the 2021 Power Plan. However, the U.S. Department of Energy's (DOE) recent decisions regarding the implementing regulations related to efficiency standards for lighting present a few unique challenges. The purpose of this agenda item is to describe the challenges, describe how staff proposes to proceed, and seek the Council's informal approval of the proposed approach.

Discussion:

At the time the Council began work on the 7th Power Plan, it was understood that the federal Energy Policy and Conservation Act (EPCA), as amended, required any general service lamps (GSLs) sold to meet a minimum efficacy standard of 45 lumens/watt (lm/W) effective January 1, 2020. General service lamps, as defined by statute, includes general service incandescent lamps, among others. Thus, in developing the conservation supply curves for the 7th Plan, staff included that minimum standard in the baseline, meaning any lighting gains up to 45 lm/W were considered part of the baseline and not part of the efficiency targets.

As you may recall, however, DOE just recently adopted a final determination that effectively rescinded the requirement that any general service lamps meet the minimum efficiency standard of 45 lm/W beginning January 1, 2020. To accomplish this, DOE did not amend or rescind the requirement, but instead DOE partitioned general service lamps into three different technology classifications of general service incandescent (GSIL), general service fluorescent, and general service LED lamps. And then concluded that the standards for GSILs specifically do not need to be amended because more stringent standards are not economically feasible for those lamps. Thus, DOE effectively rescinded application of the backstop requirement as to GSILs.

DOE's determination is certain to be challenged in federal court, with one aspect of the challenge likely to be that dividing general service lamps into these separate technological classifications with different standards for each is inconsistent with how Congress defined general service lamps in EPCA. Another likely challenge will be that DOE's determination effectively represents a "backsliding" in the standards, in violation of EPCA's anti-backsliding provision. While it is certainly plausible that DOE's determination will be invalidated upon challenge, litigation will be ongoing throughout the development of the conservation supply curves for the 2021 Plan.

Adding to the complexity, the State of Washington has adopted its own standard requiring general service lamps to meet or exceed a lamp efficacy of 45 lm/W. As long as DOE's recent lighting decisions remain valid and in effect, Washington's separate and stricter standard could be challenged in court under an argument that it conflicts with and is preempted by the federal standards. But that has not happened yet, and we have no way of gauging the likelihood of an outcome that invalidates Washington's standard. In addition, California also adopted a minimum standard of 45 lm/W for general service lamps effective January 1, 2020. However, California's standard did get challenged in federal court, and in that case the federal judge declined to stay the effectiveness of California's standard in consideration of EPCA's exceptions to preemption applicable to California (and Nevada). The challengers later withdrew their suit.

Given these differences and the uncertainty, staff proposes to proceed as follows:

- Staff will respect DOE's recent decisions as the federal standard to develop the baseline for the conservation supply curves. We will assume it applies to all lamps sold in Oregon, Idaho and Montana, which means that any potential gains in efficiency above the standard as it now applies will be fair game for inclusion in the plan's conservation targets if cost effective.
- Staff will also respect Washington's 45 lm/w lighting standard as the standard for all lamps sold in Washington. Gains in efficiency up to that standard in Washington will be part of the baseline.

If litigation changes these standards, staff will have a very small window of time to readjust. And given the schedule for the Plan, staff must proceed and lock down very soon what standards apply in determining the baseline for the conservation supply curves. At that time staff will need to build into the targets or the plan's implementation

provisions some flexibility reflecting the fact that the standards that apply might change in the near future.

Finally, given all the uncertainty around efficiency standards caused by DOE's actions, and the potential impact this could have on the market and on the efficiency goals in future power plans, staff has an interest in including language in the 2021 Plan to the effect that backsliding on cost-effective efficiency standards and building energy codes is generally poor policy and inconsistent with the spirit of both the Northwest Power Act and the federal laws on energy efficiency standards.

We do not need a formal decision by the Council, but do need to know informally whether members are comfortable with the approach or have different guidance for staff.

More Info: The final DOE lighting determination is available here:
<https://www.regulations.gov/document?D=EERE-2019-BT-STD-0022-0120>


The Council provided comment on the proposed rulemaking in October 2019 <https://nwcouncil.box.com/s/nq92yk0pbi3xswubqmwahao9oc31csrt>

Washington Appliance Standards Statute, see RCW 19.260.040 (18):
<https://app.leg.wa.gov/RCW/default.aspx?cite=19.260.040>

California Regulatory Advisory on GSLs:
https://www.energy.ca.gov/sites/default/files/2019-11/Regulatory-Advisory-GSLs_ADA.pdf

Lighting Standard & 2021 Plan Considerations

Council Meeting
Feb 12, 2020




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Today's Agenda

- Walk-through recent federal and state decisions regarding lighting efficiency standards and the challenges presented
- Discuss staff's proposed approach for addressing these recent decisions in development of the conservation supply curves for the draft 2021 Power Plan
- Seek Council feedback and informal approval of staff's proposed approach



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Background

- **2007 – Energy Independence and Security Act**
 - Amended the Energy Policy and Conservation Act of 1975 to expand coverage to include general service lamps, as defined by statute to include, among other lamps, general service incandescent lamps (GSILs)
 - Established a series of efficiency standards for lamps that took effect between 2012 and 2014
 - Included a backstop provision directing DOE to prohibit the sale of any general service lamp that does not meet a minimum efficacy standard of 45 lumens per Watt, beginning Jan 1, 2020
- **2016 – Seventh Power Plan**
 - Conservation Supply Curves
 - Understood the 45 lm/W to apply to all general service lamps, effective January 1, 2020
 - Included that minimum standard in the baseline, meaning any lighting gains up to 45 lm/W were considered part of the baseline and not part of the efficiency goals



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Recent Updates

- **May 2019**
 - Washington enacted HB 1444, requiring general service lamps to meet or exceed an efficiency of 45 lm/W
- **December 2019**
 - California adopted a minimum standard of 45 lm/W for general service lamps
 - DOE issued a final determination, concluding the standards for GSILs do not need to be amended as more stringent standards would not be economically feasible for incandescent bulbs. Thus, effectively rescinding the backstop requirement as applied to incandescent bulbs.



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Implications

- **Differing standards and uncertainty going forward**
 - DOE's final determination is likely to be challenged in federal court, with one likely argument being that it violates EPCA's anti-backsliding provision
 - Washington's standard could also be challenged as long as DOE's determination remains valid and in effect
 - California's standard will likely have some impact on the markets
- **Supply Curve Development for draft 2021 Power Plan**
 - Staff must lock down soon what standards apply in determining the baseline for the conservation supply curves
 - Very small window to adjust if litigation changes these standards



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Staff's Proposed Approach

- **Conservation Supply Curves**
 - Staff will use the federal standards in effect to develop the baseline
 - We will assume it applies to lamps sold in Oregon, Idaho and Montana
 - Staff will use Washington's 45 lm/W standard as the standard for all lamps sold in Washington
 - Gains in efficiency up to that standard in Washington will be part of the baseline
- **Additional Proposed Language**
 - Staff would also like to include some language in the draft plan to the effect that backsliding on cost-effective efficiency codes and standards is poor policy



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