

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Caption [use short title]

Docket Number(s): 08-0311-ag(L); 08-0312-ag(con)

State of New York, et al.

Motion for: Voluntary remand

v.

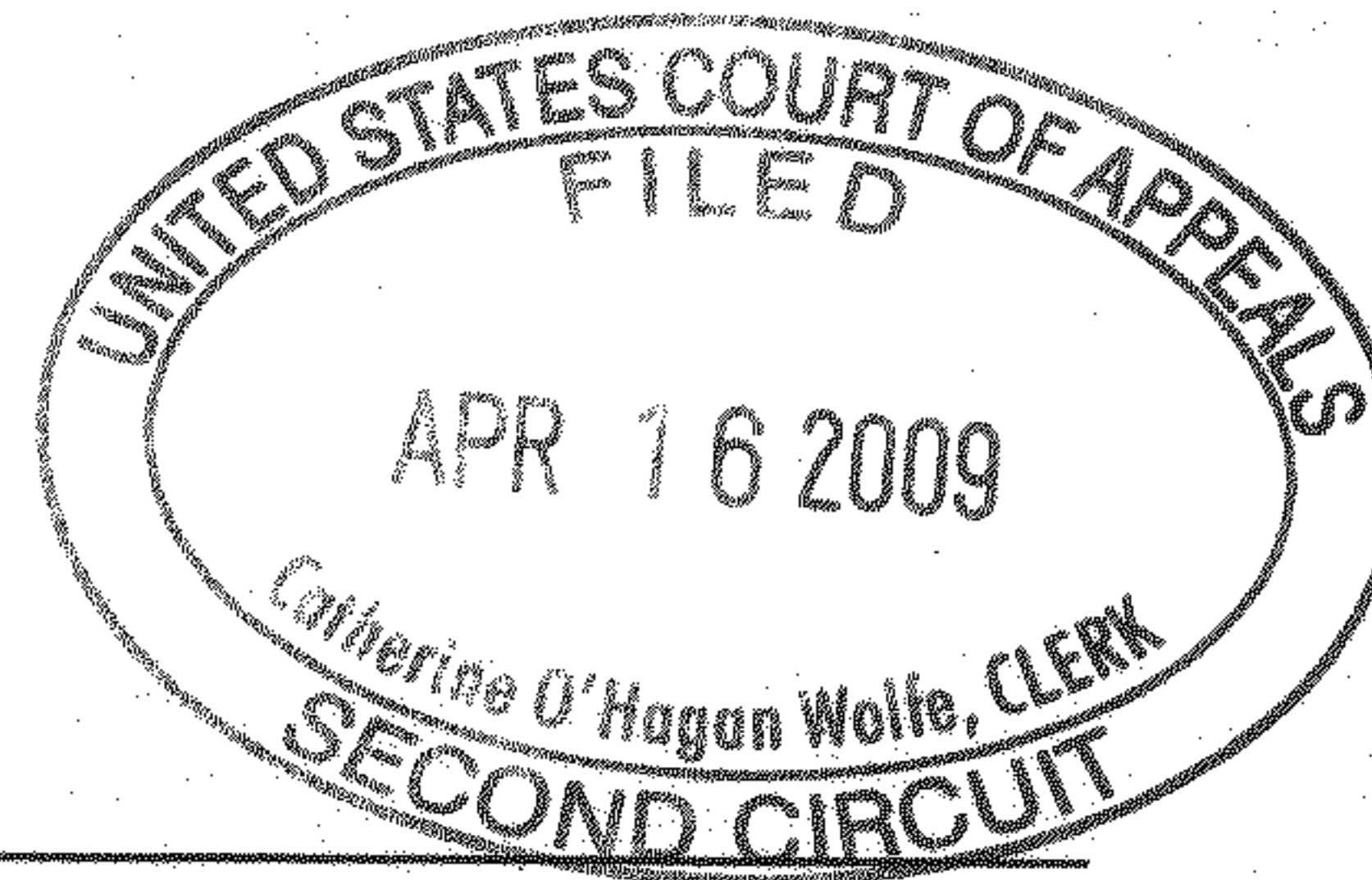
Department of Energy, et al.

Set forth below precise, complete statement of relief sought: Voluntary remand to Department of Energy for further notice and comment rulemaking

proceedings leading to revised final rule. DOE will proceed as expeditiously as possible

on remand, in light of available agency resources. The agency anticipates that it will be able to

complete the revised final rule, after notice and comment, no later than May 1, 2011.



MOVING PARTY: Department of Energy, Secretary of Energy

OPPOSING PARTY: State of New York, et al; NRDC; AHRI

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: H. Thomas Byron III

OPPOSING ATTORNEY [Name]: Robert Rosenthal; Timothy Ballo; Jeffrey Clark

[name of attorney, with firm, address, phone number and e-mail] U.S. Department of Justice, Civil Division, Appellate Staff Main (RFK) Room 7260 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530 (202) 616-5367; H.Thomas.Byron@usdoj.gov

[name of attorney, with firm, address, phone number and e-mail] New York AG's office; Earthjustice; Kirkland & Ellis The Capitol; 1625 Massachusetts Avenue, Suite 702; 655 Fifteenth Street, N.W. Albany, NY 12224; Washington, DC 20036; Washington, DC 20005 518-402-2260; 202-667-4500; 202-879-5960 robert.rosenthal@oag.state.ny.us; tballo@earthjustice.org; jclark@kirkland.com

Court/Judge/Agency appealed from: Department of Energy

Please check appropriate boxes:

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has consent of opposing counsel: A. been sought? B. been obtained?

Has request for relief been made below? Has this relief been previously sought in this Court?

Is oral argument requested? (requests for oral argument will not necessarily be granted)

Requested return date and explanation of emergency:

Has argument date of appeal been set? If yes, enter date April 29, 2009

Signature of Moving Attorney: Date: April 15, 2009

Has service been effected? [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT: CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: 4/21/09

By: [Signature]

