

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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

MOTION INFORMATION STATEMENT

Docket Number(s): 21-108, 21-428, 21-564

Caption [use short title]

Motion for: To consolidate cases

Set forth below precise, complete statement of relief sought:
Consolidate case number 21-564 with case numbers
21-108 and 21-428

California v. US Department of Energy

Alliance for Water Efficiency v. US Department of Energy

Sierra Club v. US Department of Energy

MOVING PARTY: US Dept of Energy, Sec'y of Energy

OPPOSING PARTY: California; Alliance for Water Efficiency; Sierra Club

- Plaintiff Defendant
Appellant/Petitioner Appellee/Respondent

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Court- Judge/ Agency appealed from: United States Department of Energy

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
Yes No (explain):

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

Has this request for relief been made below? Yes No
Has this relief been previously sought in this court? Yes No
Requested return date and explanation of emergency:

Opposing counsel's position on motion:
Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date:

Signature of Moving Attorney:

/s/ Katherine Allen Date: 3/22/2021 Service by: CM/ECF Other [Attach proof of service]

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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STATES OF CALIFORNIA, et al.,  
Petitioners,

v.

UNITED STATES DEPARTMENT OF ENERGY  
and JENNIFER M. GRANHOLM, Secretary, United  
States Department of Energy,  
Respondents.

**No. 21-108**

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ALLIANCE FOR WATER EFFICIENCY, et al.,  
Petitioners,

v.

UNITED STATES DEPARTMENT OF ENERGY  
and JENNIFER M. GRANHOLM, Secretary, United  
States Department of Energy,  
Respondents.

**No. 21-428**

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SIERRA CLUB,  
Petitioner,

v.

UNITED STATES DEPARTMENT OF ENERGY  
and JENNIFER M. GRANHOLM, Secretary, United  
States Department of Energy,<sup>1</sup>  
Respondents.

**No. 21-564**

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**UNOPPOSED MOTION TO CONSOLIDATE CASES**

Respondents the United States Department of Energy and Jennifer M.  
Granholtm, Secretary, United States Department of Energy, hereby move to

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<sup>1</sup> Substituted for David Huizenga, former Acting Secretary, U.S. Department of Energy, pursuant to Federal Rule of Appellate Procedure 43(c)(2).

consolidate the above captioned cases. Counsel for all petitioners have indicated they do not oppose the consolidation.

On January 20, 2021, in Case No. 21-108, the States of California, Connecticut, Illinois, Maine, Michigan, Minnesota, New Jersey, New Mexico, New York, Nevada, Oregon, Vermont, and Washington, Commonwealth of Massachusetts, the District of Columbia, and the City of New York filed a petition for review of a final rule, *Energy Conservation Program: Establishment of New Product Classes for Residential Clothes Washers and Consumer Clothes Dryers*, 85 Fed. Reg. 81359 (Dec. 16, 2020), issued by the Department of Energy (DOE) pursuant to the authority of the Energy Policy and Conservation Act, 42 U.S.C. §§ 6291-6309.

On January 27, 2021, the Alliance for Water Efficiency, U.S. Public Interest Research Group, and Environment America filed a petition for review of the same rule in the Seventh Circuit Court of Appeals. *See Alliance for Water Efficiency v. United States Department of Energy*, No. 21-1166.

Because the petition in this Court in Case No. 21-108 was filed first, the Seventh Circuit transferred *Alliance for Water Efficiency* to this Court pursuant to 28 U.S.C. § 2112(a), which governs venue when multiple petitions for review challenging the same order are filed. *Alliance for Water Efficiency* is now Case No. 21-428 in this Court. On February 26, 2021, this Court consolidated Case Nos. 21-108 and 21-428.

The Sierra Club also filed a petition for review of the same DOE rule in the Ninth Circuit Court of Appeals on February 12, 2021. *See Sierra Club v. U.S.*

*Department of Energy*, No. 21-70319 (9th Cir.). Because the petition in Case No. 21-108 in this Court was filed first, the Ninth Circuit transferred *Sierra Club* to this Court pursuant to 28 U.S.C. § 2112(a). *Sierra Club* is now Case No. 21-564 in this Court. Because it is a petition for review of the same rule as in case Nos. 21-108 and 21-428, it should be consolidated with those cases.

Counsel for the petitioners in all of the cases have indicated that the petitioners do not oppose the consolidation of Case No. 21-564 with Case Nos. 21-108 and 21-428.

### Conclusion

For the foregoing reasons, Case No. 21-564 should be consolidated with Case Nos. 21-108 and 21-428.

Respectfully submitted,

MICHAEL RAAB

s/Katherine Twomey Allen  
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MARCH 2021

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 394 words, according to the count of Microsoft Word.

/s/ Katherine Twomey Allen  
Katherine Twomey Allen