

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK et al.

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY et
al.,

Respondents.

No. 19-3652 (L) and
19-3658 (Con)

**UNOPPOSED MOTION TO HOLD PETITIONS FOR REVIEW IN
ABEYANCE**

Respondents the U.S. Department of Energy and Jennifer M. Granholm, Secretary of Energy, respectfully move to hold the above-captioned petitions for review in abeyance for an additional 60 days.

1. These petitions for review challenge a final rule issued by the Department of Energy entitled “Energy Conservation Program: Definition for General Service Lamps” and published at 84 Fed. Reg.46,661 on September 5, 2019.

2. On January 20, 2021, the President ordered federal agencies, including the Department of Energy, to “immediately review all existing regulations” issued in the last four years that “may be inconsistent

with, or present obstacles to” stated environmental objectives. Exec. Order No. 13,990 § 2(a), 86 Fed. Reg. 7037 (Jan. 25, 2021). The Department of Energy identified the challenged rule at issue in this case as falling within the scope of Executive Order 13,990, and accordingly stated that it is considering “suspending, revising, or rescinding” the challenged rule. Review of Actions of the Prior Administration (Feb. 19, 2021), https://www.energy.gov/sites/prod/files/2021/02/f82/eere_eo13990_memo_1.pdf. In accordance with that review, the agency has issued a request for information and comments relating to certain lamps, which “may be relevant to a possible implementation of the statutory backstop” in 42 U.S.C. § 6295(i)(6)(A)(v). 86 Fed. Reg. 28001, 28001 (May 25, 2021). The parties have addressed the statutory backstop’s applicability in briefing here.

3. In the next 60 days, the Department of Energy intends to sign a notice of proposed rulemaking concerning the definitions of the terms “general service lamp” and “general service incandescent lamp” and to transmit that document to the Office of the Federal Register for publication. The parties have addressed those definitions in the briefing here.

4. Due to the Department's continued reconsideration of the rule under review, the Court has held these cases in abeyance since March 9, 2021. Order, Dkt. 316 (2d Cir. Mar. 9, 2021) (granting abeyance for 60 days); Order, Dkt. 335 (2d Cir. June 1, 2021) (granting further abeyance for 60 days).

5. Because the Department of Energy is actively reconsidering the rule under review here, and because the Department will soon take regulatory action that may substantially change the underlying legal framework of these petitions, the Court should hold the petitions in abeyance for 60 days.

6. We have consulted with counsel for petitioners in both consolidated cases, who indicate that they do not oppose this motion.

Accordingly, these consolidated petitions should be held in abeyance for 60 days pending further reconsideration of the challenged rule by the Department of Energy.

Respectfully submitted,

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August 2, 2021

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the requirements of Rule 27(d)(1)(E) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font, and that it complies with the type-volume limitation of Rule 27(d)(2)(A), because it contains 415 words, according to the count of Microsoft Word.

/s/ Daniel Aguilar
Daniel Aguilar

CERTIFICATE OF SERVICE

I certify that on August 2, 2021, I electronically filed this reply with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Daniel Aguilar
Daniel Aguilar