

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

STATE OF CALIFORNIA, et al.,

Petitioners,

v.

UNITED STATES DEPARTMENT OF  
ENERGY, et al.,

Respondents.

No. 21-108 (L)

No. 21-428 (CON)

No. 21-564 (CON)

**UNOPPOSED MOTION TO STAY BRIEFING**

The above-captioned case represents three petitions (consolidated in this Court) for review of a final rule, issued by the U.S. Department of Energy (DOE), to establish new product classes for residential clothes washers and clothes dryers. *See* 85 Fed. Reg. 81,359 (Dec. 16, 2020) (“Washer-Dryer Rule”). The petitioners across the consolidated cases—the Alliance for Water Efficiency; the State of California and its co-petitioners; and the Sierra Club (collectively “Petitioners”)—respectfully move to stay the briefing of this case until February 1, 2022.

I. On May 18, 2021, this Court granted the Petitioners’ joint motion to stay briefing in the consolidated cases, pending DOE’s review of the

Washer-Dryer Rule, until October 1, 2021. It further ordered the DOE to provide status reports at 60 day intervals. ECF No. 180.

2. DOE's July 19, 2021 status report stated that DOE was "working diligently to reevaluate the final rule at issue in these petitions," and that it expected the process to be completed by the end of 2021.

3. On August 11, 2021, DOE issued a notice of proposed rulemaking to revoke the Washer-Dryer Rule. 86 Fed. Reg. 43,970 (Aug 11, 2021). Comments on the proposal are due on October 12, 2021.

4. Currently, briefing in the case is stayed until October 1, 2021, and DOE's response briefs would be due within 90 days after Petitioners' briefs, thus December 30, 2021. But if DOE revokes the Washer-Dryer Rule in the manner of the August 11 proposal, that event will significantly change the character of the case. DOE might contend that the revocation makes the case moot. Even if DOE does not revoke the Washer-Dryer Rule, all parties would likely need to file an additional round of briefs to discuss the import of whatever DOE does or does not do by the end of December.

5. Petitioners do not take a position on whether the revocation of the Washer-Dryer Rule would indeed obviate the petitions. But they recognize that a continued pause in the case while DOE reviews its proposed

revocation of the Washer-Dryer Rule would continue to conserve the resources of DOE, of Petitioners, and of the Court.

6. Extending the stay of the briefing schedule, and the filing of opening briefs, until February 1 would give all parties time to review what action DOE takes in December 2021, and to respond appropriately in subsequent filings.

7. Accordingly, Petitioners respectfully ask the Court to stay briefing in this case until February 1, 2022.

8. Petitioners have conferred with DOE, and DOE consents to this motion.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that the foregoing motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Vollkorn, a proportionally spaced font. I further certify that this response complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 423 words according to the count of Microsoft Word.

*/s/ Keith Bradley* \_\_\_\_\_

KEITH BRADLEY

**CERTIFICATE OF SERVICE**

I certify that on September 23, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

*/s/ Keith Bradley*

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