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VIA CM/ECF

September 17, 2021

Catherine O'Hagan Wolfe  
Clerk of Court  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

RE: *State of California v. United States Department of Energy*, No. 21-108(L), 20-428(Con), 21-564(Con) (2nd Cir.)

Dear Ms. Wolfe:

These consolidated petitions for review challenge a final rule issued by the U.S. Department of Energy (DOE) concerning residential clothes washers and consumer clothes dryers. *See* 85 Fed. Reg. 81,359 (Dec. 16, 2020). On May 18, 2021, this Court denied petitioner Alliance for Water Efficiency's motion to stay the rule pending review, and granted the petitioners' joint motion to stay briefing in the consolidated cases until October 1, 2021. The Court also ordered DOE to file status reports with the Court at 60-day intervals. DOE provides its second status report here.

On January 20, 2021, President Biden issued Executive Order 13,990 on "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," which sets out various public health and environmental policy objectives. Exec. Order No. 13,990, 86 Fed. Reg. 7037 (Jan. 20, 2021). The Executive Order directs all agencies "to immediately review" all agency actions taken in the past four years "that are or may be inconsistent with, or present obstacles to," the policy objectives, and "consistent with applicable law, consider suspending, revising, or rescinding" those actions. *Id.* at 7037, § 2(a). The Executive Order required agencies to submit to the Office of Management and

Budget (OMB) by February 19, 2021, a “preliminary list of any actions being considered pursuant” to that directive “that would be completed by December 31, 2021, and that would be subject to OMB review.” *Id.* at 7038, § 2(b). On the same day, the White House published a list of agency actions that heads of certain agencies “will review in accordance with the Executive Order,” and the list included the washer and dryer rule at issue here. *See* The White House, *Fact Sheet: List of Agency Actions for Review* (Jan. 20, 2021), <https://go.usa.gov/xsQnN>.

On February 19, DOE publicly released the list of the Office of Energy Efficiency and Renewable Energy actions that it is considering pursuant to Executive Order 13,990. The washer and dryer rule appears on that list. *See* Memorandum from Kelly Speakes-Backman, Acting Assistant Secretary for Energy Efficiency and Renewable Energy (Feb. 19, 2021), <https://go.usa.gov/xsmKj>.

To give the agency sufficient time to comply with the Executive Order, this Court on May 18, 2021, granted petitioners’ unopposed motion to stay the briefing in these cases until October 1, 2021, with status reports due at 60-day intervals.

Pursuant to the direction provided in the Executive Order, DOE is working diligently to reevaluate the final rule at issue in these petitions. The agency expects that this process will be completed by the end of 2021. On August 3, 2021, the agency issued a notice of proposed rulemaking, proposing, as relevant here, to revoke the rule at issue in these petitions and reinstate the previous product classes and their applicable standards. *See* 86 Fed. Reg. 43,970 (Aug. 11, 2021). DOE will hold a webinar on the proposed rule on September 23 and will accept comments on the proposed rule through October 12. *Id.*

In view of these developments, the parties have conferred and intend to move for a further stay of the briefing schedule in advance of the October 1 expiration of the current stay. Accordingly, the Court should continue the briefing stay in these consolidated cases through at least October 1, and until such time as the Court orders in response to the forthcoming motion.

Sincerely,

/s/ Kyle T. Edwards

Kyle T. Edwards

Counsel for Respondents