

**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)

PETITIONERS' STATUS REPORT

On April 29, 2022, the Court granted petitioners' unopposed motion to hold the petitions for review in abeyance pending the Fifth Circuit's mandate in *Louisiana v. Granholm*, No. 22-60146. Doc. 221. The Court ordered petitioners to submit status reports at 60-day intervals.

The petitions seek review of a final rule that respondent U.S. Department of Energy ("DOE") had issued in December 2020. No briefing on the merits has been submitted, because during 2021 DOE asked the Court to stay briefing while DOE considered whether to revise or revoke the rule. In January 2022, DOE published a rule that revoked the December 2020 rule. But in the *Louisiana v. Granholm* case cited above, a group of states has

petitioned the Fifth Circuit seeking vacatur of that revocation. If the Fifth Circuit denies the *Louisiana v. Granholm* petition, then DOE's revocation of the December 2020 rule would remain secure, and petitioners would have no desire to proceed further in this case; but if the Fifth Circuit grants the requested relief, the result would be that the legally deficient December 2020 rule that petitioners are contesting here would be restored. *See* Doc. 116 (explaining grounds for holding the case in abeyance).

On April 26, 2022, DOE filed with the Fifth Circuit its certified index of the record for the January revocation rule.

On April 27, 2022, the Fifth Circuit ordered that the petitioners' opening brief would be due on June 6, 2022.

As a consequence of two extensions granted to the petitioners, the opening brief in *Louisiana v. Granholm* was filed on July 6, 2022.

Respondent DOE requested and was granted an extension of time for its response brief, which is now due on September 6, 2022.

Petitioners are not aware of any subsequent action by DOE affecting either the December 2020 rule at issue in this case or the January 2022 revocation rule being challenged in *Louisiana v. Granholm*.

Respectfully submitted,

/s/ Keith Bradley _____

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CERTIFICATE OF SERVICE

I certify that on August 29, 2022, 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

KEITH BRADLEY