

NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 20-1317 (consolidated with Nos. 20-1318, 20-1431, & 21-1009)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, et al.,
Petitioners,

v.

U.S. DEPARTMENT OF TRANSPORTATION, et al.,
Respondents.

On Review of Agency Action of the
Pipeline and Hazardous Materials Safety Administration

MOTION TO HOLD PETITIONS IN ABEYANCE

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici

Petitioners in No. 20-1317 are the Sierra Club, Center for Biological Diversity, Clean Air Council, Delaware Riverkeeper Network, Environmental Confederation of Southwest Florida, and Mountain Watershed Association. Petitioners in No. 20-1318 are the States of Maryland, New York, California, Delaware, Illinois, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington; the Commonwealths of Massachusetts and Pennsylvania; the People of the State of Michigan; and the District of Columbia. Petitioner in Nos. 20-1431 and 21-1009 is The Puyallup Tribe of Indians. Respondents are the Pipeline and Hazardous Materials Safety Administration (PHMSA); the United States Department of Transportation; Pete Buttigieg, U.S. Secretary of Transportation; Tristan Brown, Acting Administrator of PMHSA; and the United States of America.

B. Rulings Under Review

Petitioners seek review of *Hazardous Materials: Liquefied Natural Gas by Rail*, 85 Fed. Reg. 44,994 (July 24, 2020) (Rule). Petitioner in No. 21-1009 also seeks review of PHMSA's November 13, 2020 decision denying Petitioner's administrative appeal of the Rule.

C. Related Cases

There are several petitions challenging the Rule, all of which were consolidated in this matter. *Sierra Club v. DOT*, No. 20-1317; *Maryland v. DOT*, No. 20-1318; *Damascus v. DOT*, No. 20-1387, which was dismissed on November 24, 2020; *Puyallup Tribe of Indians v. PHMSA*, No. 20-1431; and *Puyallup Tribe of Indians v. PHMSA*, No. 21-1009.

/s/ Rebecca Jaffe _____
REBECCA JAFFE

Counsel for Respondents

MOTION

These consolidated petitions challenge the regulation titled *Hazardous Materials: Liquefied Natural Gas by Rail*, 85 Fed. Reg. 44,994 (July 24, 2020) (Rule). Respondents, the United States; the United States Department of Transportation; Pete Buttigieg, U.S. Secretary of Transportation; the Pipeline and Hazardous Materials Safety Administration (PHMSA); and Tristan Brown, Acting Administrator of PHMSA (collectively, PHMSA), move the Court to place these cases in abeyance for six months pending PHMSA's implementation of Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*, 86 Fed. Reg. 7037 (Jan. 20, 2021). Petitioners do not oppose this motion.

The Executive Order establishes a policy of protecting the environment and reducing greenhouse gas emissions and directs agencies to immediately review all regulations promulgated between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, that policy. *Id.* The Executive Order provides that agencies shall “consider suspending, revising, or rescinding” any such actions. *Id.* The White House has published a list of agency actions that will be reviewed in accordance with the Executive Order, and the Rule is one of them. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>. PHMSA needs

time to conduct the review that the Executive Order requires. Accordingly, PHMSA requests that this Court hold these cases in abeyance for six months. PHMSA may seek a further abeyance, if necessary, after six months.

The parties have not yet briefed these cases. The certified index to the record in No. 21-1009 is due on February 26, 2021. Order (Jan. 12, 2021). The Court has ordered the parties to submit a proposed briefing format by March 1, 2021. Order (Jan. 28, 2021).

Agencies have authority to reconsider past actions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Courts may hold cases in abeyance pending completion of agency reconsideration proceedings. *Am. Petroleum Inst. v. EPA*, 683 F.3d 382, 384 (D.C. Cir. 2012).

To allow PHMSA time to review the Rule, and to avoid potentially unnecessary adjudication, PHMSA respectfully moves to place these petitions in abeyance for six months, with status reports from PHMSA due at 90-day intervals. In addition, PHMSA respectfully moves to suspend the deadlines for filing the certified index to the record in No. 21-1009 and the proposed briefing format while the Court considers this abeyance motion.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f) this document contains 404 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

/s/ Rebecca Jaffe

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