

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 21-602 Caption [use short title]

Motion for: abeyance of petition for review and extension of deadline to file the administrative record

Set forth below precise, complete statement of relief sought: Respondents request that the petition for review be held in abeyance while the U.S. Department of Energy considers the challenged agency actions pursuant to an Executive Order. We request that the deadline to file the administrative record be extended until 30 days after the abeyance is lifted.

State of New York v. U.S. Department of Energy

MOVING PARTY: U.S. Dep't of Energy, Jennifer M. Granholm OPPOSING PARTY: State of New York et al.

Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Sarah Carroll OPPOSING ATTORNEY: Lisa Kwong [name of attorney, with firm, address, phone number and e-mail]

U.S. Department of Justice, Civil Division, Appellate Staff N.Y. State Office of the Attorney General, Environmental Protection Bureau 950 Pennsylvania Ave. NW, Washington, DC 20530 The Capitol, Albany, NY 12224 202-514-4027, sarah.w.carroll@usdoj.gov 518-776-2422, lisa.kwong@ag.ny.gov

Court- Judge/ Agency appealed from: U.S. Department of Energy

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

Opposing counsel's position on motion: Unopposed Opposed Don't Know

Does opposing counsel intend to file a response: Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date:

Signature of Moving Attorney:

/s Sarah Carroll Date: 03/22/2021 Service by: CM/ECF Other [Attach proof of service]

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Yes No Has this relief been previously sought in this court? Yes No Requested return date and explanation of emergency:

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, STATE OF
CALIFORNIA, STATE OF ILLINOIS,
DISTRICT OF COLUMBIA, STATE OF
MAINE, COMMONWEALTH OF
MASSACHUSETTS, STATE OF NEVADA,
STATE OF MINNESOTA, STATE OF
NEW MEXICO, STATE OF OREGON,
STATE OF WASHINGTON, STATE OF
VERMONT, CITY OF NEW YORK,

Petitioners,

v.

UNITED STATES DEPARTMENT OF
ENERGY, JENNIFER M. GRANHOLM,

Respondents.

No. 21-602

**UNOPPOSED MOTION TO HOLD PETITION FOR REVIEW IN
ABEYANCE AND EXTEND DEADLINE TO FILE
ADMINISTRATIVE RECORD**

This petition for review involves two U.S. Department of Energy (DOE) rulemakings—“Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters; Withdrawal,” 86 Fed. Reg. 3873 (Jan. 15, 2021), and “Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters,” 86 Fed. Reg. 4776 (Jan. 15, 2021).

1. On January 20, 2021, President Biden issued Executive Order No. 13,990, directing the heads of all agencies, including DOE, to “immediately review all existing regulations . . . issued . . . between January 20, 2017, and January 20, 2021, that . . . may be inconsistent with, or present obstacles to,” the Executive Order’s stated environmental objectives. Exec. Order No. 13,990 § 2(a), 86 Fed. Reg. 7037 (Jan. 20, 2021). The Order states that the heads of agencies “shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.” *Id.* The Order further provides that within “30 days of the date of this order,” agency heads “shall submit to the Director of the Office of Management and Budget (OMB) a preliminary list of any actions being considered pursuant to . . . [the] order that would be completed by December 31, 2021,” and “[w]ithin 90 days of the date of this order,” agency heads “shall submit to the Director of OMB an updated list of any actions being considered . . . that would be completed by December 31, 2025.” *Id.* § 2(b).

2. On February 19, 2021, after reviewing relevant documents, DOE published a preliminary list of actions of the Office of Energy Efficiency and Renewable Energy that are “being considered pursuant to section 2(a) of Executive Order 13990.” Memorandum from Kelly Speakes-Backman, Acting Assistant Sec. for Energy Efficiency & Renewable Energy, U.S. Dep’t of Energy (Feb. 19, 2021), https://www.energy.gov/sites/prod/files/2021/02/f82/eere_eo13990_memo_1.pdf. The list includes the two actions that the petition for review challenges. *See id.*

3. To allow DOE sufficient time to complete its review, the government respectfully moves to place this matter in abeyance, with status reports due at 60-day intervals. The government further requests that this Court extend the deadline to file the administrative record, currently due April 26, 2021, until 30 days after the abeyance is lifted.

Petitioners have authorized us to state that this motion is unopposed.

Respectfully submitted,

MICHAEL RAAB

/s/ Sarah Carroll

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MARCH 2021

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 472 words, according to the count of Microsoft Word.

/s/ Sarah Carroll

SARAH CARROLL

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2021, I electronically filed the foregoing motion 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/ Sarah Carroll

SARAH CARROLL