

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN GAS ASSOCIATION,)
AMERICAN PUBLIC GAS ASSOCIATION,)
SPIRE INC., SPIRE ALABAMA INC., SPIRE)
MISSOURI INC., AND THERMO PRODUCTS,)
LLC,)

Petitioners,)

v.)

No. 22-1030

U.S. DEPARTMENT OF ENERGY AND)
JENNIFER GRANHOLM, SECRETARY, U.S.)
DEPARTMENT OF ENERGY,)

Respondents.)

**UNOPPOSED MOTION OF PETITIONERS
TO HOLD PETITION IN ABEYANCE**

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Circuit Rule 27, the American Gas Association, American Public Gas Association, Spire Inc., Spire Alabama Inc., Spire Missouri Inc., and Thermo Products, LLC (“Petitioners”) move this Court to hold the Petition for Review of the final rule at issue in this case (the “Final Rule”)¹ in abeyance pending publication of a final

¹ Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notification of final interpretive rule, 86 Fed. Reg. 73947 (December 29, 2021).

Department of Energy (“DOE”) efficiency regulation issued in reliance on the Final Rule. Abeyance is appropriate, in the interests of judicial economy, to facilitate review of the Final Rule, and closely-related issues raised by DOE’s application of the Final Rule in the context of a particular category of products, in a single consolidated proceeding. Petitioners are authorized to state that Respondents take no position on this motion.

The Final Rule states that DOE will conduct further rulemaking concerning standards for residential furnaces and commercial water heating equipment and that – in those proceedings – “DOE plans to once again evaluate whether amended energy conservation standards for the subject covered products/equipment would result in significant savings of energy, be technologically feasible, and be economically justified, consistent with its latest interpretation” (*i.e.*, the Final Rule). *See* Final Rule, 86 Fed. Reg. 73947, at 73968 (December 29, 2021).

Proposed rules entitled “Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces” and “Energy Conservation Standards for Commercial Water Heating-Equipment” are already pending regulatory review by the Office of Management and Budget (“OMB”) pursuant to Executive Order 12866 (October 4, 1993).² Petitioners expect to seek

² *See* Energy Conservation Standards for Commercial Water Heating-Equipment, RIN1904-AD34 at <https://www.reginfo.gov/public/do/eoDetails?rrid=213012> and

judicial review of any final rules in those proceedings that are issued in reliance on the Final Rule at issue in this case.

Holding the Petition for Review in this case in abeyance pending conclusion of the pending rulemaking proceedings concerning standards for non-weatherized residential furnaces and commercial water heating equipment would serve the interests of judicial economy by facilitating review of the Final Rule and closely-related issues raised by DOE's application of the Final Rule in a single consolidated proceeding. This Court has frequently employed abeyance when – as here – related, ongoing administrative proceedings could influence the course of judicial review and abeyance would not materially harm the litigants. *See Am. Petrol. Inst. v. EPA*, 683 F.3d 382, 384 (D.C. Cir. 2012) (placing case in abeyance where new agency proposal could, if finalized, materially amend rule under review and change the course of judicial review or render it unnecessary); *Time Warner Entertainment Co. v. FCC*, 240 F.3d 1126, 1128 n.1 (D.C. Cir. 2001) (noting the court's decision to hold challenges to a rule in abeyance while the agency completed new rulemaking that could alter the rules being challenged).

Therefore, Petitioners respectfully move to place this matter in abeyance, with status reports due at 120-day intervals, pending DOE's issuance of a final

Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnace, RIN 1904AD20 at <https://www.reginfo.gov/public/do/eoDetails?rrid=226112>.

standards regulation applying the Final Rule so that review of the rule and DOE's application of it can be addressed in a single consolidated proceeding.

Respectfully submitted,

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Dated: March 25, 2022

CERTIFICATE OF COMPLIANCE

The Unopposed Motion of Petitioners to Hold Petition in Abeyance (“Motion”) complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), the Motion contains 548 words, according to the count of Microsoft Word.

The Motion complies with the typeface requirements of Fed. R. App. P. 27(d)(1)(E) and 32(a)(5), and the type-style requirements of Fed. R. App. P. 27(d)(1)(E) and 32(a)(6), because the Motion has been prepared in a proportionally spaced 14-point Times New Roman type.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 25(d) of the Federal Rules of Appellate Procedure and Circuit Rule 25(a) of this Court, I certify that on March 25, 2022 I caused to be electronically filed the foregoing Motion with the Clerk of the Court of the United States Court of Appeals for the District of Columbia Circuit by using the Court's CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the Court's CM/ECF system.

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