

ORAL ARGUMENT NOT YET SCHEDULED

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

AMERICAN GAS ASSOCIATION, *et al.*

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY, *et al.*

Respondents.

No. 22-1030

**MOTION OF NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB,  
AND CONSUMER FEDERATION OF AMERICA FOR LEAVE TO  
INTERVENE IN SUPPORT OF RESPONDENT**

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27, Movants Natural Resources Defense Council (“NRDC”), Sierra Club, and Consumer Federation of America (“Consumer Federation”) respectfully request leave to intervene in support of respondent Department of Energy (“DOE,” or the “Department”) in the above-captioned petition challenging DOE’s final rule entitled “Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters,” 86 Fed. Reg. 73,947 (Dec. 29, 2021).

Counsel for all parties have been contacted for their position on this motion. Counsel for Respondent has indicated that they take no position on the motion; Counsel for Petitioners American Gas Association; American Public Gas Association; Spire, Inc.; Spire Alabama, Inc.; Spire Missouri, Inc.; and Thermo Products, Inc. indicate that they take no position on this motion.

## INTRODUCTION

### *Congress requires increasingly stringent efficiency standards*

The Energy Policy and Conservation Act (the “Act”) aims to “conserve energy supplies through energy conservation programs” by, among other things, improving the energy efficiency of consumer appliances and commercial equipment. *See* 42 U.S.C. §§ 6201(4)-(5), 6291-6309, 6311-17. Accordingly, Congress prescribed initial energy efficiency standards for many types of products and tasked DOE with keeping the federal standards up to date. *See* Pub. L. No. 100-12, 101 Stat. 103 (1987). DOE must review the existing efficiency standards for consumer products and commercial equipment at least every six years and either determine that the standards do not need to be amended or propose new ones. *Id.* §§ 6295(m)(1) 6313(a)(6)(C)(i). If the Department proposes new standards, it must publish a final rule within two years of issuing the proposal. *Id.* §§ 6295(m)(3)(A) 6313(a)(6)(C)(iii).

The Department does not have unfettered discretion in setting standards. Among other considerations, any standards DOE adopts must be technologically feasible and economically justified. *Id.* § 6295(o)(2)(A). In setting out criteria for economic justification, Congress did not anticipate that an impact on consumer satisfaction would be an automatic bar to advances in energy conservation. Indeed, the Act directs the Department to consider “any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard” when weighing the benefits and burdens of a standard. *Id.* § 6295(o)(2)(B)(i)(IV); *see also id.* § 6313(a)(6)(B)(ii)(IV) (analogous provision for commercial equipment.)

However, Congress constrained DOE’s discretion to achieve energy savings at the expense of consumer utility by including what is known as the Act’s “features” provision. The Department may not establish or amend a standard if it finds that the new standard is “likely to result in the unavailability in the United States ... of performance characteristics (including reliability), features, sizes, capacities, and volumes” that exist at the time the rule would be issued. *Id.* § 6295(o)(4); *see also id.* § 6313(a)(6)(B)(iii)(II) (similar, though not identical, language applicable to commercial equipment).

Finally, recognizing that the ability to tailor standards to accommodate key features would provide important flexibility to DOE, Congress supplied the

Department with the authority to divide certain products into multiple classes and to adopt standards unique to each class. *See id.* § 6295(q)(1) (permitting the Department to set a higher or lower efficiency standard if, among other reasons, a subset of a product type has a “performance-related feature” that justifies a different standard).

### ***Energy efficiency standards for gas furnaces and water heaters***

The most energy efficient gas furnaces and water heaters available today use “condensing” technology. These products extract significantly more heat from the combustion gases; specific venting equipment is required to remove the remaining, cooler gases, which may lack sufficient buoyancy to rise out of a vent on their own. 83 Fed. Reg. 54,883, 54,885 (Nov. 1, 2018).

In conducting rulemakings to update the energy efficiency standards for residential furnaces and commercial water heaters, DOE proposed amended standards that would essentially require the use of condensing technology for some classes of these products, effectively prohibiting the sale of all non-condensing models for those product classes. *See* 81 Fed. Reg. 65,720, 65,852 (Sept. 23, 2016) (furnaces); 81 Fed. Reg. 34,440, 34,503-04 (May 31, 2016) (water heaters). However, DOE missed its deadline for final action on these proposals. *See* 42 U.S.C. § 325(m)(3)(A) (requiring the Department to finalize an amended standard for

consumer products within two years of proposing it); *see also id.* § 6313(a)(6)(C)(iii)(I) (requiring the same for commercial equipment).

In January of 2021, the Department issued a rule reinterpreting the features provision in 42 U.S.C. § 6295(o)(4) to prohibit efficiency standards for gas-consuming products that would require the use of condensing technology. “Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters,” 86 Fed. Reg. 4776 (Jan. 15, 2021) (the “January 2021 Rule”). In reliance on this new interpretation, the Department also withdrew the proposed efficiency standards for gas furnaces and commercial water heaters. 86 Fed. Reg. at 4776. The Department took these actions in response to an October 18, 2018 rulemaking petition from several members of the gas industry, including three of the petitioners in this case: American Public Gas Association, American Gas Association, and Spire, Inc. *Id.* at 4776, 4781.

In December 2021, the Department reversed course. Specifically, the Department returned to its prior view that the Act’s features provision does not bar DOE from setting efficiency standards for gas-consuming products that would require the use of condensing technology. 86 Fed. Reg. at 73,948 (the “December 2021 Rule”).

The petition for review in this case seeks vacatur of the December 2021 Rule, which, if successful, would reinstate the January 2021 Interpretive Rule. The January 2021 Interpretive Rule precluded the Department from adopting standards requiring the use of condensing technology. Therefore, vacatur in this case would starkly limit the Department's authority to improve the efficiency of the many millions of furnaces and water heaters in the United States.

### **ARGUMENT**

Under Federal Rule of Appellate Procedure 15(d), a party seeking to intervene in a petition for review proceeding in this Court must file a motion that contains “a concise statement of the interest of the moving party and the grounds for intervention.” Because the appellate rule does not provide standards for intervention, circuit courts often look to the rules governing intervention in the district courts under Federal Rule of Civil Procedure 24. *See Sierra Club, Inc. v. EPA*, 358 F.3d 516, 517-18 (7th Cir. 2004); *see also Int'l Union v. Scofield*, 382 U.S. 205, 216-17 n.10 (1965). Here, Movants satisfy the requirements for both intervention as-of-right and permissive intervention.

#### **I. Movants are entitled to intervene as of right**

Intervention as-of-right is appropriate under Federal Rule of Civil Procedure 24(a)(2) when: (1) the motion is timely; (2) the movant has an interest relating to the subject of the action; (3) disposition of the action may, as a practical matter,

impair or impede the movant's ability to protect that interest; and (4) the existing parties may not adequately represent the movant's interest. *See Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003). Movants satisfy each of these elements.

**A. The motion is timely**

The motion is timely because the petition for review was filed on February 25, 2022, and this motion was filed on March 28, 2022. *See Fed. R. App. P. 15(d), 26(a)(1)(C)*.

**B. Movants have an interest in the subject matter of this litigation**

Movants have an interest in ensuring that the Department can require meaningful improvements to the energy efficiency standards for gas-consuming products. If Petitioners succeed in this litigation, the December 2021 rule will be vacated and the January 2021 Rule will be reinstated. As described above, that January 2021 Rule precluded the Department from adopting condensing-level energy efficiency standards. This will virtually eliminate any possibility of strengthened efficiency standards for gas products. As the Department described, the inability to require all gas products to meet standards that are based on the use of condensing technology would mean that "DOE's ability to increase efficiencies would be limited, if not forestalled entirely." *See* 86 Fed. Reg. at 73,966-68.

Movants are organizations that have long sought to reduce the environmental impacts of energy generation and usage and to advance the interests of consumers, including by promoting federal efficiency standards because they cost-effectively reduce the need to produce and consume energy. *See, e.g.*, Decl. of Gina Trujillo ¶¶ 4-6; Decl. of Huda Fashho at 2; Decl. of Richard Eckman ¶¶ 3-5. NRDC, for example, has engaged in legislative, regulatory, and legal actions to support strong energy conservation standards for appliances and commercial equipment including by participating in the rulemaking that led to the present case. *See* Trujillo Decl. ¶ 6; *see also, e.g., NRDC v. Herrington*, 768 F.2d 1355 (D.C. Cir. 1985); *NRDC v. Abraham*, 355 F.3d 179 (2d Cir. 2004); *NRDC v. Perry*, 940 F.3d 1072 (9th Cir. 2019).

Indeed, Movants' members include consumers and business owners who use, or whose businesses use, gas-consuming products, and who directly benefit from stronger efficiency standards for these products. *See, e.g.*, Decl. of Milton Pinsky ¶¶ 6-10, 13; Decl. of Stephen Crowley ¶¶ 3-8; Decl. of Louisa Eberle ¶¶ 3-6. Movants therefore have an interest in ensuring that their members are able to continue to benefit from strengthened efficiency standards for products that consume natural gas and that the many significant benefits that potential updated



energy conservation standards would bring—including lower energy bills and reduced greenhouse gas emissions—are not discarded.<sup>1</sup>

**C. If successful, petitioners' challenge would impair Movants' interests**

Unless Movants are permitted to intervene in this litigation to defend the December 2021 Rule, these cases “*may* as a practical matter impair or impede [Movants'] ability to protect th[eir] interest.” Fed. R. Civ. P. 24(a)(2) (emphasis added); *see Foster v. Gueory*, 655 F.2d 1319, 1325 (D.C. Cir. 1981) (observing that a “possibility” of impairment is a “sufficient showing” for intervention). If petitioners succeed in their challenge, DOE’s ability to improve the efficiency of, e.g., gas-consuming furnaces and water heaters will be greatly constrained, as non-condensing products simply cannot achieve comparable levels of efficiency. *See* 86 Fed. Reg. at 73,966 (explaining that requiring improved efficiency of non-condensing products at levels approaching those of condensing products would produce “acidic condensate” that would “require upgrades similar to what is required for condensing systems”).

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<sup>1</sup> The Department previously estimated substantial net benefits from the proposed efficiency standards for furnaces and commercial water heaters. Specifically, DOE estimated that the furnace rule would have net present benefits (in 2015 dollars) of \$9.9 billion to \$26.3 billion, and that the water heater rule would have net present benefits (in 2014 dollars) of \$5.6 billion to \$10.7 billion, depending on the discount rate used. *See* 81 Fed. Reg. at 65,725 (furnaces) *and* 81 Fed. Reg. at 34,446 (water heaters).

#### **D. Movants' interests may not be adequately represented**

Movants need only satisfy the “minimal” requirement that representation of its interests by existing parties “‘may be’ inadequate,” a requirement that is easily met here. *Fund for Animals*, 322 F.3d at 735 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)). Petitioners are directly adverse to Movants in this litigation, as they are trying to prevent the Department’s adoption of condensing-level energy conservation standards that Movants are advocating. And while Movants wish to intervene in support of the Department, this Court “ha[s] often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.” *Fund for Animals*, 322 F.3d at 736; *see also, e.g., id.* at 736 & n.9 (collecting cases); *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015); *see also NRDC v. Costle*, 561 F.2d 904, 913 (D.C. Cir. 1977) (holding that industry intervenors’ interests may not be adequately represented by EPA and that intervention as a matter of right is thus justified).

Further, Movants “need not prove that representation by the [Department] is inadequate but need show merely that it *may* be.” *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972). A “potential conflict ... is sufficient to satisfy a proposed intervenor’s ‘minimal’ burden.” *Dimond v. Dist. of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986). And even if the Department does

fully defend its rule, Movants will still “serve as a vigorous and helpful supplement to [the Department’s] defense.” *Costle*, 561 F.2d at 912-13.

## **II. In the alternative, Movants should be granted permissive intervention**

In the alternative, Movants merit permissive intervention under Federal Rule of Civil Procedure 24(b). Permissive intervention—an “inherently discretionary enterprise,” *EEOC v. Nat’l Children’s Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998)—is typically appropriate where an applicant’s defense “shares a question of law or fact in common with the underlying action and if the intervention will not unduly delay or prejudice the rights of the original parties.” *Acree v. Republic of Iraq*, 370 F.3d 41, 49 (D.C. Cir. 2004), *abrogated on other grounds by Republic of Iraq v. Beaty*, 556 U.S. 848 (2009).

Movants easily meet that threshold here. The case is still at a preliminary stage, and a briefing schedule has not been established. Movants seek to buttress the defense of the December 2021 Rule, arguments which by necessity share questions of law and fact with this case. In addition, Movants’ deep experience with DOE’s efficiency standards program, including participation in the rulemaking leading to both the January 2021 Rule and December 2021 Rule, may be of use to the Court as it considers the issues in this case.

### III. Movants have standing

Because Movants seek to intervene in support of Respondent, and are thus not affirmatively invoking the Court's jurisdiction, they do not separately need standing to sue. *See Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) (explaining that "it was not ... incumbent on [a party] to demonstrate its standing" when it participated "as an intervenor in support of the ... Defendants," or "as an appellee" on appeal, "[b]ecause neither role entailed invoking a court's jurisdiction"). Nevertheless, for avoidance of doubt, Movants have Article III standing

A movant has standing in circumstances like these where it "benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the [movant's] benefit." *Crossroads*, 788 F.3d at 317. Here, as noted above, the stronger energy efficiency standards made possible by the December 2021 Rule would benefit Movants and their members who use, or whose businesses use, gas furnaces and water heaters, and who wish to purchase the most efficient versions of these products possible. *See, e.g.*, Pinsky Decl. ¶¶ 6-10, 13; Crowley Decl. ¶¶ 3-8; Eberle Decl. ¶¶ 3-6. If Petitioners succeed in setting aside the December 2021 Rule, the Department would again be prohibited from adopting standards that increase the availability of the most efficient gas furnaces and water heaters, which would injure Movants and their members by giving them "less

opportunity to purchase fuel-efficient [products] than would otherwise be available to them.” *Ctr. for Auto Safety v. NHTSA*, 793 F.2d 1322, 1332 (D.C. Cir. 1986); *see also Orangeburg v. FERC*, 862 F.3d 1071, 1077-78 (D.C. Cir. 2017) (collecting similar cases). Movants therefore have standing to intervene because Petitioners “seek[] relief, which, if granted, would injure” Movants and their members. *Crossroads*, 788 F.3d at 318.

### CONCLUSION

For the reasons above, the Court should grant Movants leave to intervene in support of respondent DOE.

Respectfully submitted,

/s/ Melissa J. Lynch

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing **Motion to Intervene in Support of Respondent** on all parties through the Court's electronic case filing system.

/s/ Melissa J. Lynch  
Melissa J. Lynch

DATED: March 28, 2022

**RULE 26.1 DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure and D.C. Circuit Rule 26.1, Movant-Intervenors Natural Resources Defense Council, Inc., Sierra Club, and Consumer Federation of America state that they are non-profit advocacy organizations dedicated to the protection of public health, the environment, and the consumer interest. They have no outstanding shares or debt securities in the hands of the public, nor any parent, subsidiary, or affiliate that has issued shares or debt securities to the public.

DATED: March 28, 2022

/s/ Melissa J. Lynch

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**Exhibit A**

Declaration of Gina Trujillo

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

AMERICAN GAS ASSOCIATION, *et al.*

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY, *et al.*

Respondents.

No. 22-1030

**DECLARATION OF GINA TRUJILLO**

I, Gina Trujillo, declare as follows:

1. I am the director of Membership at the Natural Resources Defense Council, Inc. (“NRDC”). I have been the director of membership since January 1, 2015 and have worked at NRDC in the membership department for more than 25 years.

2. My duties include supervising the preparation of materials that NRDC distributes to members and prospective members. Those materials describe NRDC and identify its mission.

3. NRDC is a membership organization incorporated under the laws of the State of New York. It is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code. NRDC's headquarters are located at 40 West 20<sup>th</sup> Street, 11<sup>th</sup> floor, New York, NY 10011.

4. NRDC's mission statement declares that "The Natural Resources Defense Council's purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends." The mission statement goes on to declare that NRDC works "to restore the integrity of the elements that sustain life – air, land, and water – and to defend endangered natural places." NRDC's mission includes the prevention and mitigation of global warming to protect and maintain NRDC's members' use and enjoyment of natural resources threatened by climate change, as well as members' own health and safety.

5. Through its Climate and Clean Energy Program, NRDC pursues federal and state policies to curb air pollution, particularly the pollutants that cause climate change. NRDC seeks to reduce emissions created by the generation of electricity, including by reducing the amount of electricity that is consumed.

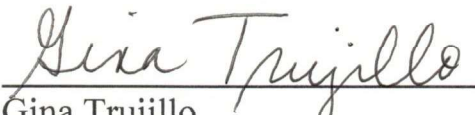
6. As a part of these efforts to protect our climate, communities, wildlife and ecosystems, NRDC joined our colleagues in submitting comments on the Department of Energy's ("DOE") December 2021 proposed interpretive rule titled

“Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters.”

7. When an individual becomes a member of NRDC, he or she authorizes NRDC to take legal action on his or her behalf to protect the environment and public health.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Signed on March 28, 2022

  
Gina Trujillo

**Exhibit B**

Declaration of Milton Pinsky

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

AMERICAN GAS ASSOCIATION, *et al.*

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY, *et al.*

Respondents.

No. 22-1030

**DECLARATION OF MILTON PINSKY**

I, Milton Pinsky, do hereby affirm and state:

1. I am currently a member of the Natural Resources Defense Council (NRDC). I joined NRDC in 2017 through its affiliate Environmental Entrepreneurs (E2), which is a group of business leaders, investors, and professionals who advocate for smart policies that are good for the economy and good for the environment.
2. I am Chairman of the Board of Directors for Banner Real Estate Group (Banner). I founded Banner and was its CEO from 1990 until 2017. I own a 60% stake in Banner.
3. Banner owns a variety of properties, primarily large apartment buildings and self-storage facilities.

4. Banner adds buildings to its portfolio both by purchasing existing buildings as well as developing and building new ones. When Banner builds a new building, it may retain an ownership interest or sell it, depending on the situation.

5. I personally support NRDC's work to support clean energy, reduce air pollution from electricity generation, and promote energy-efficient consumer products, appliances, and buildings.

6. Banner also values energy efficiency. It prioritizes investments in energy efficiency by requiring a lower internal rate of return threshold for energy investments at its properties.

7. Tenants at Banner's properties also value energy efficiency, in particular energy efficient appliances. Banner strives to provide efficient appliances to its tenants, though it must be sensitive to upfront costs, especially when buying on a large scale.

8. The cost and efficiency of consumer appliances and commercial equipment impact the profitability of a Banner property. As the 60% owner of Banner, the profitability of the company also affects my financial compensation.

9. I understand that stronger efficiency standards can reduce the cost of efficient appliances and equipment through economies of scale, because those standards remove inefficient products from the marketplace. Broader availability and reduced prices for efficient products makes it easier for Banner to pursue



fiscally responsible investments in energy efficiency and to provide energy efficient products to its tenants.

10. Because Banner owns many properties, and also develops new properties, Banner regularly needs to purchase consumer appliances and commercial equipment for which the United States Department of Energy has established energy efficiency standards.

11. I understand that the United States Department of Energy previously issued an interpretive rule that would have made it more difficult for it to improve the efficiency of products, such as water heaters and furnaces, that consume natural gas.

12. I understand that the United States Department of Energy subsequently issued a second interpretive rule that reversed the first interpretive rule and would therefore improve the ability of the Department to improve the efficiency of products that consume natural gas.

13. To the best of my knowledge, after consulting with engineers and other employees of Banner, Banner currently owns and/or regularly purchases the following products:

- a. *Residential Water Heaters*. Banner routinely purchase large numbers of residential gas water heaters for use in our residential rental properties.

- b. *Commercial Water Heaters*. Banner routinely purchases commercial-scale gas water heaters for use in its residential rental properties.
- c. *Non-Weatherized Furnaces*. Banner routinely purchases non-weatherized gas furnaces.

14. I understand that NRDC seeks to intervene to defend the Department of Energy's second interpretive rule.

15. I understand that if the Petitioners succeed in their lawsuit, it will make it much more difficult for the Department of Energy to improve the efficiency of products purchased by Banner that consume natural gas.

16. I fully support NRDC's efforts to defend the Department of Energy's rule.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Signed on March 28, 2022

  
\_\_\_\_\_  
Milton Pinsky

**Exhibit C**

Declaration of Stephen Crowley

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

AMERICAN GAS ASSOCIATION, *et al.*

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY, *et al.*

Respondents.

No. 22-1030

**DECLARATION OF STEPHEN CROWLEY**

I, Stephen Crowley, declare as follows:

1. I am a member of Sierra Club, and have been a member since about 1989.
2. I live in South Burlington, Vermont, and have lived there for 38 years.
3. I own my home, which is heated by a propane furnace. The furnace is approximately 25 years old.
4. Because of the age of my furnace, I anticipate having to replace it with a new propane furnace within the next several years. When the time comes to replace my furnace with a new model, I want to buy the most energy efficient propane furnace that I can find and afford.
5. Although saving money by reducing my fuel bills matters to me, I care about the energy efficiency of my furnace primarily because efficient furnaces

help to reduce carbon dioxide emissions that contribute to climate change. Climate change is an issue of great importance to me, and I have worked to gain a broad and deep understanding of climate change and how it is affecting the planet. In my view, the damage we are inflicting through carbon dioxide emissions represents the crime of the millennium, because many of the people most deeply affected by climate change are among those with the fewest resources to respond to such disastrous consequences.

6. Although climate change has effects on a global scale, it is already impacting the places where I and my children and grandchildren live. In Vermont, the warming from climate change is harming our winter sports industry and maple syrup production, and climate change is increasing the intensity of droughts and floods that can devastate our farms. I was a high school teacher here for 28 years, and care deeply about my former students. Vermont is not insulated from the effects of climate change, and those impacts are only going to get worse.

7. Because reducing fossil fuel use helps to reduce my own contribution to carbon dioxide emissions, I have taken other steps to conserve energy. For example, I keep my home's thermostat low in the winter and drive a plug-in hybrid car. Because I mostly make only short, local trips, I am able to do most of my driving without using gasoline.

8. For all these reasons, I support and would benefit from stronger federal energy efficiency standards for gas furnaces that bring all products up to the level of the best performing models available today. In contrast, I would be harmed if the U.S. Department of Energy were unable to adopt such standards.

9. I support Sierra Club's intervention in this case to defend the U.S. Department of Energy's authority to adopt strong efficiency standards for gas furnaces.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 21, 2022.

/s/ Stephen Crowley  
Stephen Crowley

**Exhibit D**

Declaration of Louisa Eberle

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

AMERICAN GAS ASSOCIATION, *et al.*

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY, *et al.*

Respondents.

No. 22-1030

**DECLARATION OF LOUISA EBERLE**

I, Louisa Eberle, declare as follows:

1. I am a member of Sierra Club. I am also a staff attorney in Sierra Club's Environmental Law Program. I have been a member of Sierra Club since I joined the staff as an associate attorney in September, 2017.

2. I live in Jefferson County, Colorado, and recently purchased a home in the City of Arvada, in Jefferson County. The closing was completed last week, and I have made arrangements to move into the home in April of this year.

3. My new home is heated by a gas furnace that is approximately 12 years old. The home is also served by a gas water heater that is approximately 8 years old. Although I had the property inspected before I bought it and that inspection uncovered no problems with either appliance, I expect that I will need to



replace both the furnace and the water heater within the next 5-10 years as they reach the end of their useful lives.

4. When the time comes to replace my furnace and water heater, I intend to purchase the most efficient appliances I can afford to have installed. I want to improve the energy efficiency of my home for several reasons. I want to save money on monthly gas bills. I also desire to reduce my personal carbon footprint to limit my contribution to climate change and help to reduce the harms it is causing to the environment. Finally, I want to ensure my home is comfortable year-round, maintaining an even temperature indoors and allowing me to reduce my gas consumption without having to turn down the thermostat to an uncomfortable temperature in the winter.

5. To start improving the efficiency of my new home, I have scheduled an energy audit for the home to take place before I move in. I am planning to make other improvements to the home – such as adding insulation and sealing air leaks – based on the results of that audit.

6. For all these reasons, I support and would benefit from stronger federal energy efficiency standards for gas furnaces and water heaters. I believe such standards should bring all products up to the level of the best performing models available today. In contrast, I would be harmed if the U.S. Department of Energy were unable to adopt strong standards for gas furnaces and water heaters.

7. I support Sierra Club's intervention in this case to defend the U.S. Department of Energy's authority to adopt strong efficiency standards for gas furnaces and water heaters.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 24, 2022.

/s/ Louisa Eberle

Louisa Eberle

**Exhibit E**

Declaration of Huda Fashho

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

<p>AMERICAN GAS ASSOCIATION, <i>et al.</i></p> <p style="text-align:center">Petitioners,</p> <p>v.</p> <p>U.S. DEPARTMENT OF ENERGY, <i>et al.</i></p> <p style="text-align:center">Respondents.</p>	<p style="text-align:center">No. 22-1030</p>
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**DECLARATION OF HUDA FASHHO**

I, Huda Fashho, declare as follows:

- I am the Managing Director of Member Care for the Sierra Club, a non-profit corporation organized under the laws of the State of California. I work in Sierra Club's national office in Oakland, California. I became Member Services Supervisor in 2011, and became Associate Director of Member Care in 2016, Director of Member Care in 2018. In that capacity, I am responsible for planning, developing, and directing the programs and Club staff responsible for: providing information services to members, the operational and user aspects of the Club's member/donor database, the delivery of member/donor acknowledgments and membership renewals. My work requires that I be familiar with the Club's purpose, organization, structure and activities, and with environmental interests

and concerns of Club members. My work also requires me to be familiar with the nature and scope of the Club's membership programs, its membership records, and the manner in which information on members can be retrieved.

- The Sierra Club is a nonprofit corporation existing under the laws of California, with its principal place of business in Oakland, California. The Club is a membership organization dedicated to exploring, enjoying, and protecting the wild places of the earth, and to protecting and restoring the quality of the natural and human environment. The Club's actions to protect and enhance the environment include advocacy and litigation to strengthen and enforce environmental laws and regulations. Club members are greatly concerned about air quality and energy efficiency, and the Club has a long history of activities at both the local and national levels to protect air quality and enhance energy efficiency, often working closely with our members to provide them with services and information that are helpful to them locally.

- The Club regularly maintains membership records that include the address of each member. These records are regularly updated each business day to add new members, reflect address changes, and change membership status for those who are no longer active members.

- The records are maintained on a computer database, from which my staff and I obtained the information provided below.

- Sierra Club currently has 781,432 individual members, residing in all 50 states and Puerto Rico.
- As of March 25, 2022, the Club has the following number of members living in the following counties:
  - Kern, CA: 905
  - Los Angeles, CA: 30023
  - San Bernardino, CA: 2920
  - Bronx, NY: 911
  - Kings, NY: 3280
  - Nassau, NY: 3140
  - New York, NY: 6281
  - Queens, NY: 2481
  - Richmond, NY: 578
  - Rockland, NY: 840
  - Suffolk, NY: 4102
  - Westchester, NY: 3566
  - Bucks, PA: 2024
  - Chester, PA: 2180
  - Delaware, PA: 1668
  - Montgomery, PA: 3260

- Philadelphia, PA 2479
- Cook, IL: 12706
- DuPage, IL: 3106
- Kane, IL: 1347
- Lake, IL: 2300
- Will, IL: 1081

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on March 25, 2022.



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**Exhibit F**

Declaration of Richard Eckman



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

AMERICAN GAS ASSOCIATION, *et al.*

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY, *et al.*

Respondents.

No. 22-1030

**DECLARATION OF RICHARD ECKMAN**

1. My name is Richard Eckman. I am over the age of eighteen years and suffer from no legal incapacity. The following information is within my personal knowledge.

2. I am an Energy Advocate at Consumer Federation of America (“CFA”). In that capacity, I am responsible for CFA’s work advocating for energy efficiency standards that benefit consumers and reduce emissions that cause climate change.

3. CFA is an association of more than 250 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. We have long supported cost-effective energy efficiency standards and the U.S. Department of Energy’s (“DOE’s”) efficiency standards program for consumer products.

4. CFA has participated in dozens, if not hundreds, of efficiency rulemakings, regulatory negotiations, and legislative hearings involving large and small energy using durables, ranging from automobiles to heavy-duty trucks, air conditioners, furnaces, water heaters, computers, and light bulbs.

5. Put very simply, energy efficiency standards save consumers money over the long run through lower monthly energy bills. Generally speaking, the benefits far outweigh the costs. Efficiency gains from standards have translated into large dollar savings – in 2015 alone, consumers saved \$57 billion on their utility bills due to standards adopted since DOE's Appliance and Equipment Standards Program went into effect in 1987. The typical single-family household spends approximately \$2,000/year on their utility bills. Appliance standards have saved households \$500/year in utility costs. In addition, reduced energy demand defers the need for new power plants, which also helps to keep energy costs down for consumers. That money is put back into the economy toward other goods and services with a greater multiplier effect.

6. Gas heating products, i.e. furnaces and water heaters, represent by far the largest utility expenditure (often 50%, or more) of consumers' home energy bills. The Department of Energy's final gas interpretative rule issued on December 29, 2021, would reverse a prior rule which established separate product classes. The current rule will save consumers and businesses \$100 billion through 2050 by reducing their energy bills while also mitigating climate change by reducing cumulative CO<sub>2</sub> emissions by more than 500 million metric tons.

7. In summary, we believe that the final gas interpretative rule issued by the Department of Energy on December 29, 2021, affecting products such as gas furnaces and water heaters, will benefit consumers by reducing their energy bills. CFA and its members have a strong interest in preserving DOE's rule for the benefit of their respective members.

I declare under penalty of perjury that the foregoing is true and correct.



Richard Eckman

Dated: March 25, 2022