

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): 20-4256, 20-4285

Caption [use short title]

Motion for: continuing abeyance during related litigation

Set forth below precise, complete statement of relief sought:

The parties move jointly to extend the abeyance in this matter pending the resolution of the related litigation.

NRDC v. U.S. DOE; California v. U.S. DOE

MOVING PARTY: Petitioners and U.S. DOE

OPPOSING PARTY:

- Plaintiff Defendant
Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Somerset Perry

OPPOSING ATTORNEY: Amanda L. Mundell

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Court- Judge/ Agency appealed from: Petition for Review of U.S. Department of Energy Rule

Please check appropriate boxes:

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

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

Has this request for relief been made below?
Has this relief been previously sought in this court?
Requested return date and explanation of emergency:

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/ Somerset Perry Date: 04/18/2022 Service by: CM/ECF Other [Attach proof of service]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

NATURAL RESOURCES DEFENSE  
COUNCIL, et al.,

Petitioners,

v.

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

Respondents.

No. 20-4256

STATE OF CALIFORNIA, et al.,

Petitioners,

v.

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

Respondents.

No. 20-4285

**UNOPPOSED MOTION TO CONTINUE  
ABEYANCE DURING RELATED  
LITIGATION**

The consolidated petitions comprising this litigation seek judicial review of a final rule issued by the United States Department of Energy (DOE) establishing separate product classes for short-cycle dishwashers and excluding such dishwashers from the requirements of federal energy and water efficiency standards. *Energy Conservation Program for Appliance Standards: Establishment of a New Product Class for Residential Dishwashers*, 85 Fed. Reg. 68,723 (Oct. 30, 2020). DOE subsequently issued a final rule rescinding the dishwasher short-cycle product class, which was then itself challenged

through a petition in the Fifth Circuit. Therefore, petitioners<sup>1</sup> in these consolidated cases hereby respectfully request that the Court hold the cases in abeyance during the pendency of that litigation in order to preserve the petitioners' capacity to challenge the legal inadequacies of the original dishwasher short-cycle product class rule.

1. On October 30, 2020, DOE issued a final rule entitled "Energy Conservation Program for Appliance Standards: Establishment of a new Product Class for Residential Dishwashers." 85 Fed. Reg. 68,723 (Oct. 30, 2020).

2. On December 29, 2020, the two petitioner groups filed their petitions challenging that final rule. *Natural Resources Defense Council, et al. v. U.S. Dept. of Energy, et al.*, 20-4256, Dkt. 1; *State of California, et al. v. U.S. Dept. of Energy, et al.*, 20-4285, Dkt. 1.

3. Pursuant to Executive Order No. 13,990, DOE subsequently announced it was reconsidering the validity of the dishwasher short-cycle

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<sup>1</sup> Petitioners in the lead case, *Natural Resources Defense Council, et al. v. U.S. Dept. of Energy, et al.*, include Natural Resources Defense Council, Sierra Club, Consumer Federation of America, and the Massachusetts Union of Public Housing Tenants. Petitioners in the member case, *State of California, et al. v. U.S. Dept. of Energy, et al.*, include the States of California, Connecticut, Illinois, Maine, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York.

product class final rule. Dept. of Energy, *Review of Actions of the Prior Administration* (Feb. 19, 2021), <https://go.usa.gov/xsDCW>; Exec. Order No. 13,990, 86 Fed. Reg. 7,037 (Jan. 25, 2021). As a result, the parties agreed to ask the Court to place the petitions in abeyance in order to allow for DOE's reconsideration of the dishwasher short-cycle product class rule, and the Court granted that request. Dkt. 38.<sup>2</sup> The Court also consolidated the petitions in the same order. *Ibid.*

4. On January 19, 2022, DOE issued a final rule rescinding the dishwasher short-cycle product class rule. *Energy Conservation Program: Product Classes for Residential Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers*, 87 Fed. Reg. 2,673 (Jan. 19, 2022).

5. In order to allow for the consideration of potential petitions challenging the final rule rescinding the dishwasher short-cycle product class, the parties agreed to extend DOE's deadline to file the administrative record to April 20, 2022, and the Court granted the extension. Dkt. 77.

6. Subsequently, the final rule rescinding the dishwasher short-cycle product class energy conservation standards was challenged by a group of state attorneys general in a petition filed in the Fifth Circuit on March 17,

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<sup>2</sup> This and all subsequent docket citations refer to the lead case, *Natural Resources Defense Council, et al. v. U.S. Dept. of Energy, et al.*, 20-4256.

2022. *State of Louisiana, et al. v. U.S. Dept. of Energy, et al.*, 5th Cir. Case No. 22-60146 (Mar. 17, 2022).

7. Given the possibility that the final rule rescinding the dishwasher product class is invalidated through that challenge, resulting in the reinstatement of the legally deficient short-cycle product class rule which petitioners have challenged, petitioners request that the Court extend the abeyance in this matter pending the resolution of that challenge in order to preserve their challenges to the original dishwasher short-cycle product class rule. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants”); *see, e.g., American Petroleum Inst. v. EPA*, No. 13-1108 (D.C. Cir. Dec. 10, 2020) (Dkt. No. 1875192) (granting parties’ joint motion to hold proceeding in abeyance pending resolution of later-filed challenges to subsequent agency action); *Murray Energy Corp. v. EPA*, No. 16-1127 (D.C. Cir. Aug. 26, 2020) (Dkt. No. 1858346) (granting joint motion that consolidated cases continue to remain in abeyance in light of challenges to agency action rescinding challenged actions).

8. Petitioners have consulted with counsel for DOE regarding their position on this motion. DOE has confirmed it does not oppose the motion.

Dated: April 18, 2022

Respectfully Submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that this response complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 768 words according to the count of Microsoft Word.

Dated: April 18, 2022

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## CERTIFICATE OF SERVICE

I certify that on April 18, 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/ Maritza Padilla  
Maritza Padilla