

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

STATE OF CALIFORNIA, et al.,  
Petitioners,

v.

UNITED STATES DEPARTMENT OF  
ENERGY, et al.,

Respondents.

No. 21-108 (L)

No. 21-428 (CON)

No. 21-564 (CON)

**PETITIONERS' STATUS REPORT**

On April 29, 2022, the Court granted Petitioners' unopposed motion to hold these consolidated petitions for review in abeyance pending the Fifth Circuit's mandate in *Louisiana v. Granholm*, No. 22-60146. *See* Order of April 29, 2022 (ECF No. 221). The Court further ordered Petitioners to submit status reports at 60-day intervals. *Id.* Pursuant to the Court's Order, Petitioners respectfully submit the following status report.

These consolidated petitions seek review of a final rule that Respondent U.S. Department of Energy ("DOE") issued in December 2020. *See* 85 Fed. Reg. 81,359 (Dec. 16, 2020). No briefing on the merits has been submitted, because in January 2022, DOE published a rule that revoked the December 2020 rule. *See* 87 Fed. Reg. 2,673 (Jan. 19, 2022). But in the *Louisiana v. Granholm* case cited above, a group of states has petitioned the Fifth Circuit seeking vacatur of that

revocation. If the Fifth Circuit grants the requested relief, the legally deficient December 2020 rule that Petitioners are contesting here would be restored.

As of the date of this filing, the State of Louisiana's petition remains pending in the Fifth Circuit. Briefing was completed with the filing of the petitioners' reply brief on October 27, 2022. The Fifth Circuit has not yet set a date for oral argument.

Pursuant to the Court's Order, Petitioners will continue to file status reports at 60-day intervals, with the next such report due December 27, 2022.

Dated: October 28, 2022

Respectfully Submitted,

FOR SIERRA CLUB

FOR THE STATE OF CALIFORNIA

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**CERTIFICATE OF SERVICE**

I certify that on October 28, 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.

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