

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): 19-3652 (L) and 19-3658 (Con) Caption [use short title]

Motion for: abeyance

Set forth below precise, complete statement of relief sought:

Hold these cases in abeyance for 60 days

New York v. U.S. Department of Energy

MOVING PARTY: U.S. Department of Energy et al. OPPOSING PARTY: State of New York et al.

Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Karen Schoen OPPOSING ATTORNEY: Lisa S. Kwong

[name of attorney, with firm, address, phone number and e-mail]

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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):

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/ Karen Schoen Date: 3/5/2021 Service by: CM/ECF Other [Attach proof of service]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK et al.,
Petitioners,
v.
U.S. DEPARTMENT OF ENERGY et al.,
Respondents.

Nos. 19-3652 (L) and
19-3658 (Con)

**UNOPPOSED MOTION TO
HOLD PETITION FOR REVIEW IN ABEYANCE**

Respondents the U.S. Department of Energy and Jennifer M. Granholm, Secretary of Energy, respectfully move to hold the above-captioned petitions for review in abeyance for 60 days.¹

1. These petitions for review challenge a final rule issued by the Department of Energy entitled “Energy Conservation Program: Definition for General Service Lamps” and published at 84 Fed. Reg.46,661 on September 5, 2019.

2. On January 20, 2021, President Biden issued Executive Order No. 13,990, directing the heads of all agencies, including the Department of Energy, to “immediately review all existing regulations

¹ Jennifer M. Granholm has succeeded Dan Brouillette as the Secretary of Energy and should be substituted as a respondent. *See* Fed. R. App. P. 43(c)(2).

. . . 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. 25, 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 “[w]ithin 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).

3. On February 19, the Department of Energy published a memorandum identifying the final rule at issue in this case as one that the agency will “consider suspending, revising, or rescinding” in accordance with Executive Order 13,990. *See* Review of Actions of the Prior Administration (Feb. 19, 2021), <https://www.energy.gov/sites/prod/>

files/2021/02/f82/eere_eo13990_memo_1.pdf.

4. The Department of Energy is in the process of complying with Executive Order 13,990 by reviewing the challenged rule. To allow the agency sufficient time to conduct its review, respondents respectfully move to place this matter in abeyance for 60 days, starting with the date this motion is granted. Respondents may move for a further abeyance at the end of this 60-day period, which petitioners may oppose. Unless such a further motion to extend the abeyance is granted, respondents further respectfully request that the abeyance be lifted at the end of this 60-day period.

5. Petitioners have authorized us to state that they do not oppose this motion for a 60-day abeyance.

Respectfully submitted,

MICHAEL S. RAAB

/s/ Karen Schoen

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Counsel for Respondents

March 5, 2021

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this motion complies with the requirements of Rule 27(d)(1)(E) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font, and that it complies with the type-volume limitation of Rule 27(d)(2)(A), because it contains 452 words, according to the count of Microsoft Word.

/s/ Karen Schoen
Karen Schoen
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 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/ Karen Schoen
Karen Schoen
Counsel for Respondents