

ORAL ARGUMENT NOT YET SCHEDULED
**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN PUBLIC GAS ASSOCIATION,

Petitioner,

v.

No. 20-1068

UNITED STATES DEPARTMENT OF
ENERGY,

Respondent.

AIR-CONDITIONING, HEATING, AND
REFRIGERATION INSTITUTE,

Petitioner,

v.

No. 20-1072

UNITED STATES DEPARTMENT OF
ENERGY,

Respondent.

SPIRE, INC. and SPIRE MISSOURI, INC.,

Petitioners,

v.

No. 20-1100

UNITED STATES DEPARTMENT OF
ENERGY,

Respondent.

**UNOPPOSED MOTION FOR LEAVE TO INTERVENE IN
SUPPORT OF RESPONDENT**

Pursuant to Federal Rule of Appellate Procedure (“FRAP”) 15(d), the States of New York, California, Illinois, Maine, Maryland, Minnesota, Nevada, New

Jersey, Oregon, Vermont, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York (collectively, “State and Municipal Intervenors”) hereby move for leave to intervene in Case Nos. 20-1068, 20-1072, and 20-1100 in support of respondent United States Department of Energy (“DOE”) for the purpose of defending DOE’s January 10, 2020 final rule amending standards for commercial packaged boilers, 85 Fed. Reg. 1592. State and Municipal Intervenors have a compelling interest in energy efficiency and preventing the adverse effects of fossil-fuel combustion, which include emissions of carbon dioxide that contribute to climate change and releases of other pollutants harmful to human health and the environment. Moreover, recent actions taken by DOE call into question its commitment to robustly defend the rule.

Counsel for State and Municipal Intervenors contacted counsel for Petitioners American Public Gas Association, Air-Conditioning, Heating and Refrigeration Institute, Spire, Inc. and Spire Missouri, Inc., Respondent DOE and Movant Intervenor, American Gas Association to inform them of proposed intervenors’ intent to file this motion. Petitioners and movant intervenor consent to this motion and respondent takes no position.

BACKGROUND

1. These consolidated cases involve review of DOE’s final rule entitled Energy Conservation Program: Energy Conservation Standards for Commercial

Packaged Boilers, 85 Fed. Reg. 1592 (Jan. 10, 2020) (“Final Rule”). The Final Rule establishes amended standards for oil- and gas- powered commercial packaged boilers by increasing their minimum required energy efficiency, consolidating four classes of boilers with specific types of drafting systems into two generic boiler classes, and creating separate equipment classes for very large boilers. *See* 85 Fed. Reg. at 1594. Commercial packaged boilers are typically used to heat commercial and multifamily residential buildings with a central distribution system that circulates steam or hot water from the boiler to other parts of a building. Nearly a quarter of the commercial floor space in the United States is heated by such boilers.

2. DOE promulgated the Final Rule pursuant to its authority under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. §§ 6291 *et seq.* and § 6313(a)(6)(C). The Final Rule updated DOE’s 2009 commercial packaged boiler standards with “technologically feasible and economically justified” efficiency requirements that would yield “significant additional energy conservation.” 85 Fed. Reg. at 1598.

3. DOE issued the Final Rule in 2016 and posted it for error correction but, following a change in administration, delayed the Final Rule’s publication in the Federal Register in contravention of the agency’s own regulations. *See* 10 C.F.R. § 430.5 (DOE’s “error correction rule” provides that following error correction

period DOE Secretary “will submit the rule for publication”). Seeking to avoid further delay of the Final Rule’s publication and the economic and environmental benefits which DOE projected would result from its promulgation, in 2017 a coalition of states, municipalities and not for profit organizations commenced an action pursuant to 42 U.S.C. § 6305 to compel DOE to publish the rule. DOE did not publish the Final Rule in the Federal Register until January 10, 2020, only after it was directed to do so by the Ninth Circuit Court of Appeals. *See NRDC v. Perry*, 940 F.3d 1072 (9th Cir. 2019).

4. According to DOE, the amended standards will provide significant energy savings and environmental benefits. The agency’s national benefit and cost analysis revealed that the lifetime energy savings for boilers purchased over a 30-year period will equal approximately 0.27 quads of energy and save consumers and businesses up to nearly \$2 billion. DOE further estimated that the Final Rule’s projected energy savings will result in the reduction of approximately 16 million metric tons of carbon dioxide emissions, a primary contributor to climate change. DOE noted that the cumulative reduction in carbon dioxide emissions through 2030 would equal the amount of emissions resulting from the annual electricity use of nearly a quarter million homes. DOE also projected the amended boiler standards will result in emissions reductions of 139,000 tons of methane, 41,000 tons of nitrogen oxide, 3,100 tons of sulfur dioxide, as well as reduced emissions

of hazardous air pollutants such as mercury. According to DOE's analysis, the amended standards will provide net economic benefits of up to \$2.5 billion, an estimate which accounts for future anticipated operating cost savings, potential increased equipment and installation costs, and carbon dioxide and nitrogen oxide emissions. 85 Fed. Reg. at 1595-6.

5. State and Municipal Intervenors support DOE's Final Rule because it is rational, reasonable and supported by substantial evidence, and seek to intervene as respondents to defend the Final Rule against challenge by petitioners, who represent the interests of natural gas utilities and heating equipment manufacturers. As discussed in more detail below, State and Municipal Intervenors have standing to intervene based on their compelling interests in promoting energy efficiency, reducing emissions of greenhouse gases that contribute to climate change, and preventing harm to human health and the environment due to pollutants associated with the combustion of fossil fuels. If the Final Rule were set aside, State and Municipal Intervenors would be injured by the loss of the Final Rule's economic, environmental, and public health benefits.

LEGAL STANDARD

6. FRAP 15(d) provides that a party may move for leave to intervene in a case seeking review of an administrative determination of an agency "within 30 days after the petition for review is filed." A motion to intervene must "contain a

concise statement of the interest of the moving party and the grounds for intervention.” FRAP 15(d).

7. In determining whether to allow intervention under FRAP 15(d), this Court can draw on the policies underlying Federal Rule of Civil Procedure 24 (“FRCP 24”). *See Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997) (applying FRCP 24 to intervention for the purposes of appeal). Under FRCP 24, a party is entitled to intervene in an appeal as of right if it has a legally protected interest in the action; the outcome of the action threatens to impair that interest; no existing party adequately represents that interest; and its motion is timely. *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 320 (D.C. Cir. 2015). The Court can grant intervention to support the government where the movant would be harmed by a successful challenge to a regulatory action and that harm could be avoided by a ruling denying the relief sought by the petitioner. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 732-33 (D.C. Cir. 2003).

TIMELINESS

8. This motion is timely under Rule 15(d) because it is filed within 30 days of the petitions for review. *See* Petition for Review, *APGA v. USDOE*, D.C. Cir. Case 20-1068, ECF #1832856 (Mar. 9, 2020); Petition for Review, *AHRI v. USDOE*, D.C. Cir. Case 20-1072, 4th Cir. Case 20-1284, ECF#1805328 (Mar. 10,

2020); Petition for Review, *Spire v. USDOE*, D.C. Cir. Case 20-1100, 8th Cir. Case 20-1503, ECF#4890052 (Mar. 10, 2020).

9. The proposed intervention will not unduly delay or prejudice the rights of any other party.

INTEREST AND GROUNDS FOR INTERVENTION

10. If the Final Rule is set aside, State and Municipal Intervenors and their residents will lose the rule's projected economic and environmental benefits. When State and Municipal Intervenors or their residents purchase new or replacement boilers for their facilities, their options for higher efficiency models may be more limited and they may suffer higher operational costs if boiler manufacturers adhere to the lower energy efficient standards promulgated in 2009.

11. Invalidation of the Final Rule would also eliminate the rule's beneficial environmental impact and would interfere with State and Municipal Intervenors' energy and climate change policies. State and Municipal Intervenors are injured by the adverse effects of global climate change on human health and the environment, including increased heat-related deaths, damaged or lost coastal areas, disrupted ecosystems, more severe weather events, and longer and more frequent droughts. *See Massachusetts v. EPA*, 549 U.S. 497, 522-23 (2007). Rigorous research led by experts at thirteen federal agencies has confirmed that climate change is human-caused; that continued growth in emissions of carbon dioxide and other greenhouse

gases will produce economic losses across all sectors of the United States' economy; that mitigation measures do not "yet approach the scale considered necessary to avoid substantial damages to the economy, environment, and human health over the coming decades"; and that absent significant increases in global mitigation efforts, "[i]t is very likely that some physical and ecological impacts will be irreversible for thousands of years, while others will be permanent." See U.S. Global Change Research Program, "Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II," (D.R. Reidmiller et al. eds., 2018) at 26, 1347, available at https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf, (detailing harmful impacts of climate change on region-by-region basis).

12. State and Municipal Intervenors thus have a compelling interest in defending DOE's amended standards for fossil-fueled commercial packaged boilers. As DOE's analysis shows, increasing the thermal and combustion efficiency of boilers results in reduced consumption of oil and gas, which in turn reduces emissions of greenhouse gases associated with combustion of those fossil fuels. State and Municipal Intervenors rely on national efficiency standards for consumer and commercial products to complement their energy and climate change policies. Vacatur of the Final Rule would hamper their efforts to improve energy efficiency and reduce greenhouse gas emissions to combat climate change.

13. State and Municipal Intervenors have long pursued the goal of preventing and mitigating climate change harms in their states and municipalities. State and Municipal Intervenors have taken significant steps to reduce greenhouse gas emissions, including emissions from fossil-fuel combustion sources, in a variety of ways. Many states have enacted their own greenhouse gas emission limitations or goals. *See, e.g.*, Cal. Code Regs. tit. 17, §§ 95801-96022; Colo. Rev. Stat. § 25-7-102(2), § 25-7-105 (1)(e)(I); Conn. Gen. Stat. § 22a-200c & Conn. Agencies Regs. § 22a-174-31 (implementing nine-state Regional Greenhouse Gas Initiative)¹; Md. Code Ann., Pub. Util. Cos. § 7-703 (establishing that Maryland will receive 50% of its electricity from renewable sources by 2030); Mass. Gen. Laws ch. 21N, §§ 3(b), 3(d) & 4(a); 310 Code Mass. Regs. §§ 7.74 & 7.75; New Jersey Global Warming Response Act, N.J. Stat. Ann. § 26:2C-37; New York State Climate Leadership and Community Protection Act, 2019 Session Laws, ch. 106; N.Y. Comp. Codes R. & Regs. tit. 6, Part 251; North Carolina Clean Energy Plan (Oct. 2019)²; Or. Rev. Stat. § 469.503(2); Vt. Stat. Ann. tit. 30, § 8001; Wash. Rev.

¹ *See also* Del. Code Ann. tit. 7, § 6043 & Del. Admin. Code tit. 7, ch. 1147; Me. Rev. Stat. Ann. tit. 38, ch. 3-B; Md. Code Ann., Envir., § 2-1002(g); Mass. Gen. Laws ch. 21A, § 22 & 310 Mass. Code Regs. 7.70; N.J. Admin. Code §§ 7:27C-1.1 to -11.14; R.I. Gen. Laws. § 23-82-4; Vt. Stat. Ann. tit. 30, § 255.

² Available at https://files.nc.gov/ncdeq/climate-change/clean-energy-plan/NC_Clean_Energy_Plan_OCT_2019_.pdf.

Code §§ 80.80.040 and 19.405.040. Because stringent efficiency standards for commercial packaged boilers would further the State and Municipal Intervenors' goals and efforts, and would do so on a nationwide basis, State and Municipal Intervenors have a strong interest in defending DOE's Final Rule.

14. For example, under New York's Climate Leadership and Community Protection Act (CLCPA), N.Y. Environmental Conservation Law (ECL) art. 75, New York has a state-wide goal to cut greenhouse gas emissions 40 percent by 2030 and 85 percent by 2050. New York Env. Conservation Law § 75-0107. These ambitious clean energy targets will require transitioning the state's energy infrastructure from fossil-fuel to renewable energy-based technologies. Until that transition is complete, improving the efficiency of oil and gas-powered boilers through federally mandated standards which take effect in 2023 will be key to achieving the state's emissions goals.

15. Approximately 75 percent of multifamily residential buildings in New York employ a centralized boiler to provide heat to tenants. *See* NYSERDA/NYSDPS, "Residential Statewide Baseline Study" (July 2015), *available* *at*
<https://www.nyserda.ny.gov/About/Publications/Building%20Stock%20and%20Potential%20Studies/Residential%20Statewide%20Baseline%20Study%20of%20New%20York%20State>. These boilers are primarily fueled by gas (62 percent) or oil

(28 percent), and about 25 percent of such boilers are over 20 years old and ready for replacement. The Final Rule's amended standards would ensure that these older, less efficient boilers are replaced by higher efficiency boilers which would serve to reduce carbon dioxide emissions as well as consumers' and businesses' utility costs.

16. Indeed, CLCPA specifically identifies the state's need to reduce emissions from "boilers or furnaces that burn oil or natural gas" and undertake measures to reduce energy use in "existing residential and commercial buildings." ECL §§ 75-0109(2)(d); 75-0103(13)(g). Because state efforts to adopt more stringent boiler requirements may be preempted under EPCA, states have a particularly strong interest in preserving the Final Rule.

17. State and Municipal Intervenors have an extensive history of engagement in energy efficiency policy, including litigating to compel DOE compliance with EPCA rulemaking requirements. *See, e.g., New York v. USDOE*, No. 19-3652 (2d Cir. 2019) (multistate challenge to DOE withdrawal of definitional rules expanding scope of light bulb efficiency standards); *New York v. USDOE*, No. 20-743 (2d Cir. 2019) (multistate challenge to DOE determination not to increase stringency of light bulb efficiency standards); *NRDC v. Perry*, 940 F.3d 1072 (9th Cir. 2019) (multistate action to compel DOE publication of four final efficiency standards, including standards for commercial packaged boilers);

New York v. Bodman, No. 08-0311, 0312 (2d Cir. 2008) (multistate action challenging DOE efficiency standards for furnaces); *NRDC v. Abraham*, 355 F.3d 179 (2d Cir. 2004) (multistate challenge to DOE adoption of less stringent efficiency standards for central air conditioners); *NRDC v. Herrington*, 768 F.2d 1355 (D.C. Cir. 1985) (multistate challenge to DOE determination not to adopt efficiency standards); *New York v. Bodman*, Nos. 05-7807, 7808 (S.D.N.Y. 2005) (multistate action to enforce statutory rulemaking deadlines for energy efficiency standards covering over 20 products).

18. State and Municipal Intervenors have also actively participated in DOE administrative rulemakings related to residential and commercial heating equipment and have offered comments on the proper interpretation of several key EPCA provisions that are relevant to the Final Rule and the consolidated cases before this Court. These include EPCA's "features" provision, 42 U.S.C. §§ 6295(o)(4) and 6313(a)(6)(B)(ii)-(iii), and EPCA's "anti-backsliding" provision, 42 U.S.C. § 6295(o)(2). *See, e.g.*, Multistate Comments in Response to DOE Interpretive Rule Regarding Noncondensing Furnaces and Water Heaters (Sept. 9, 2019) *available at* <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0018-0082>; Multistate Comments in Opposition to Gas Industry Petition for Interpretive Ruling and Withdrawal of Proposed Furnace Standards (Mar. 1, 2019) *available at* <https://www.regulations.gov/document?D=EERE-2018-BT-STD->

[0018-0049](#); Multistate Comments in Support of DOE's Natural Gas Furnace Standards (Dec. 6, 2012); Joint Comment Response to the Supplemental Notice of Proposed Rulemaking (SNOPR) Regarding Residential Furnaces (Nov. 22, 2016) available at <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0285>.

19. State and Municipal Intervenors move to intervene to ensure that the Final Rule is adequately defended from the challenges by industry petitioners in this litigation. DOE's action regarding the Final Rule cast doubt on its willingness to do so. In particular, DOE's steadfast refusal to publish the Final Rule until it was ordered to do so suggests that the agency will not mount a robust defense of those standards in this litigation. *See NRDC v. Perry*, 940 F.3d 1072 (9th Cir. 2019).

20. Moreover, DOE's recent statements and actions in related rulemakings give State and Municipal Intervenors additional reason to doubt DOE's willingness to vigorously defend the Final Rule. For example, in its July 11, 2019 Notice of Proposed Interpretive Rule related to residential furnaces and commercial water heaters, DOE determined that an appliance's venting or drafting method is a performance-related "feature" providing unique consumer utility potentially justifying a lower efficiency standard. *See* 84 Fed. Reg. 33011, at 33020. That "updated" interpretation of EPCA's "features" provision conflicts with the interpretation of the "features" provision set forth in the Final Rule, where DOE

concluded that “the utility derived by consumers from commercial packaged boilers is in the form of the space heating function that a boiler performs, rather than the type of venting the boiler uses” and that consequently “DOE does not consider the type of venting to be a ‘feature’ that would provide utility to consumers; instead DOE properly accounts for the economic benefits of the venting type in the economic analysis.” 85 Fed. Reg. at 1610.

21. Courts have recognized that the interests of one governmental entity may not be the same as another governmental entity. *See, e.g., Forest Conserv. Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011). Moreover, “[a] governmental party that enters a lawsuit solely to represent the interests of its citizens . . . differs from other parties, public or private, that assert their own interests, even when these interests coincide.” *United States v. Hooker Chems. & Plastics Corp.* 749 F.2d 968, 992 n. 21 (2d. Cir. 1984). State and Municipal Intervenors seek to intervene here to ensure that their important and substantial interests in defending the Final Rule are adequately protected.

22. As the above-cited cases demonstrate, the interests of State and Municipal Intervenors and DOE have diverged with respect to the Final Rule. There is a very real risk in this case that DOE may seek to settle or otherwise resolve this matter in ways that are adverse to the State and Municipal Intervenors’

interests. DOE's representation of the State and Municipal Intervenors interests may, therefore, be inadequate and intervention is therefore warranted. *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972).

23. For the foregoing reasons, State and Municipal Intervenors respectfully request that this Court grant their motion to intervene in Case Nos. 20-1068, 20-1072 and 20-1100.

Dated: April 8, 2020

Respectfully Submitted,

FOR THE STATE OF NEW YORK

LETITIA JAMES
Attorney General

BARBARA D. UNDERWOOD
Solicitor General

JEFFREY W. LANG
Deputy Solicitor General

/s/ Lisa S. Kwong³
LISA S. KWONG
TIMOTHY HOFFMAN
Assistant Attorneys General
Environmental Protection Bureau
PATRICK A. WOODS
Assistant Solicitor General
Division of Appeals & Opinions

The Capitol
Albany, NY 12224
Tel: (518) 776-2422
(518) 776-2020

Email: Lisa.Kwong@ag.ny.gov
Email: Timothy.Hoffman@ag.ny.gov
Email: Patrick.Woods@ag.ny.gov

³ Counsel for the State of New York represents that the other parties listed in the signature blocks below consent to the filing of this motion.

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM
Attorney General

PAUL A. GARRAHAN
Attorney-in-Charge

/s/ Steve Novick
STEVE NOVICK
Special Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301
Tel: (503) 947-4590
Email: Steve.Novick@doj.state.or.us

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General

DAVID ZONANA
Supervising Deputy Attorney General

/s/ Anthony Austin
ANTHONY AUSTIN
JAMIE JEFFERSON
SOMERSET PERRY
Deputy Attorneys General
Office of the Attorney General
1300 I Street, 15TH Floor
Sacramento, CA 95814
Tel: (916) 210-7245
Email: Anthony.Austin@doj.ca.gov
Email: Jamie.Jefferson@doj.ca.gov
Email: Somerset.Perry@doj.ca.gov

FOR THE STATE OF NEW JERSEY

GURBIR S. GREWAL
Attorney General

/s/ Paul Youchak
PAUL YOUCHAK
Deputy Attorney General
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625
Tel: (609) 376-3370
Email: Paul.Youchak@law.njoag.gov

FOR THE STATE OF VERMONT

THOMAS J. DONOVAN, JR.
Attorney General

/s/ Laura B. Murphy
LAURA B. MURPHY
Assistant Attorney General
Environmental Protection Division
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Email: laura.murphy@vermont.gov

FOR THE STATE OF MARYLAND

BRIAN FROSH
Attorney General

/s/ John B. Howard, Jr.
JOHN B. HOWARD, JR.
Special Assistant Attorney General

Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
Tel: (410) 576-6300
Email: jbhoward@oag.state.md.us

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Daniel I. Rottenberg
DANIEL I. ROTTENBERG
Assistant Attorney General
Civil Appeals Division
JASON E. JAMES
Assistant Attorney General
Environmental Bureau
MATTHEW J. DUNN
Chief, Environmental Enf./
Asbestos Litigation Div.
Environmental Bureau
Illinois Office of the Attorney General
69 W. Washington Street, 12th Floor
Chicago, IL 60602
Tel: (312) 814-3816
Email: DRottenberg@atg.state.il.us

FOR THE COMMONWEALTH OF
MASSACHUSETTS

MAURA HEALEY
Attorney General

/s/ I. Andrew Goldberg
I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division

JOSEPH DORFLER
Assistant Attorney General
Energy and Telecommunications Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov
Email: joseph.dorfler@mass.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ Peter Surdo
PETER SURDO
Special Assistant Attorney General
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127
Tel: (651) 757-1061
Email: peter.surdo@ag.state.mn.us

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General

/s/ Loren L. AliKhan
LOREN L. ALIKHAN
Solicitor General
Office of the Attorney General
for the District of Columbia
441 Fourth Street, N.W. Suite 630-S
Washington, D.C. 20001
Tel: (202) 727-6287
Email: Loren.AliKhan@dc.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General of Maine

/s/ Katherine E. Tierney
KATHERINE E. TIERNEY
Assistant Attorney General
6 State House Station
Augusta, ME 04333
Tel: (207) 626-8897
Email: Katherine.Tierney@maine.gov
FOR THE STATE OF NEVADA

AARON D. FORD
Attorney General

/s/ Heidi Parry Stern
HEIDI PARRY STERN (Bar. No. 8873)
Solicitor General
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
Tel: (702) 486-3594
Email: HStern@ag.nv.gov

FOR THE CITY OF NEW YORK

JAMES E. JOHNSON
Corporation Counsel

/s/ Hilary Meltzer
HILARY MELTZER
Chief, Environmental Law Division
New York City Law Department
100 Church Street
New York, NY 10007
Tel: (212) 356-2070
Email: hmeltzer@law.nyc.gov

CERTIFICATE OF PARTIES AND AMICI

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), proposed State and Municipal intervenors-respondents submit the following certificate as to parties, intervenors and amici curiae in the consolidated petitions for review in Case Nos. 20-1068, 20-1072, 20-1100:

District Court

These cases involve consolidated petitions for review of a final rule by DOE entitled “Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers,” 85 Fed. Reg. 1592 (Jan. 10, 2020). Accordingly, there were no district court proceedings.

Proceedings Before This Court

Petitioners

Case No. 20-1068

Petitioner: American Public Gas Association

Case No. 20-1072

Petitioner: Air-Conditioning, Heating, and Refrigeration Institute

Case No. 20-1100

Petitioners: Spire, Inc. and Spire Missouri, Inc.

Respondent

Case Nos. 20-1068, 20-1072, 20-1100

United States Department of Energy

Intervenor

Proposed-Intervenor: American Gas Association

Amici Curiae

The proposed State and Municipal Intervenors are unaware of any entities that have given notice of, asked for leave to appear or have been granted leave to appear as amicus curiae.

Dated: April 8, 2020

/s/ Lisa S. Kwong

