

ORAL ARGUMENT NOT YET SCHEDULED

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

AMERICAN PUBLIC GAS ASS'N,
Petitioner,

v.

UNITED STATES DEPARTMENT OF
ENERGY, et al.,
Respondent.

No. 11-1485

AIR CONDITIONING CONTRACTORS
OF AMERICA, et al.,
Intervenors.

**CONSENT MOTION OF RESPONDENT
TO HOLD PROCEEDINGS IN ABEYANCE
TO ACCOMMODATE PENDING MEDIATION**

Pursuant to FRAP 27 and this Court's Circuit Rule 27, and in accordance with the Court's Appellate Mediation Procedures, respondent Department of Energy (DOE) hereby moves, with the consent of all parties and intervenors, to hold proceedings in abeyance until March 3, 2014, to accommodate pending mediation. The mediator concurs in this request.

This petition for review challenges a direct final rule issued by DOE on June 6, 2011, 76 Fed. Reg. 37408 (June 27, 2011), codified in 10 C.F.R. § 430.32, which became effective following a final order issued by DOE on October 24, 2011, 76 Fed. Reg. 67037 (Oct. 31, 2011). Petitioner American Public Gas Association (APGA) filed its petition for review on December 23, 2011. Two entities — Heating, Air-Conditioning & Refrigeration Distributors International (HARDI); and Air Conditioning Contractors of America — moved to intervene in support of petitioner. Others — Air-Conditioning, Heating, and Refrigeration Institute; Natural Resources Defense Council (NRDC); Alliance to Save Energy; American Council for an Energy-Efficient Economy; Consumer Federation of America; Massachusetts Union of Public Housing Tenants; and City of New York — moved to intervene in support of respondent. This Court granted the motions to intervene on February 14, 2012.

After briefing, DOE negotiated a settlement with APGA, and those two parties moved on January 11, 2013, to vacate the rule in part and remand for further rulemaking. HARDI and NRDC opposed that joint

motion, and HARDI sought to substitute itself as a petitioner. This Court on December 9, 2013 referred both those motions to the merits panel, and ordered new briefing. Oral argument has not yet been scheduled.

With the assistance of a mediator, through this Court's appellate mediation program, all parties and intervenors are nearing agreement on final terms of a settlement of this case. We anticipate that the negotiations on settlement and implementation will be completed by March 3, 2014. In addition, the government will seek approval of the settlement pursuant to 28 C.F.R. Part Y. We will undertake our best efforts to obtain such approval within the same timeframe.

Accordingly, we respectfully request that this Court hold proceedings in abeyance until March 3, 2014. By that date, or sooner, the parties and intervenors will notify the Court concerning the status of settlement negotiations. If necessary, any party or intervenor may file a motion to govern future proceedings on or after that date. Counsel for all parties and intervenors consent to this motion, and the mediator concurs.

CONCLUSION

For the foregoing reasons, this Court should hold proceedings in abeyance until March 3, 2014.

Respectfully submitted,

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/s/ H. Thomas Byron III

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FEBRUARY 2014

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2014, I electronically filed the foregoing Consent Motion Of Respondent To Hold Proceedings In Abeyance To Accommodate Pending Mediation by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ H. Thomas Byron III

H. THOMAS BYRON III