

Nos. 22-1030; 23-1285; 23-1337

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

AMERICAN GAS ASSOCIATION; AMERICAN PUBLIC GAS
ASSOCIATION; NATIONAL PROPANE GAS ASSOCIATION; THERMO
PRODUCTS, LLC; SPIRE INC., SPIRE ALABAMA INC.; SPIRE MISSOURI
INC.

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY; OFFICE OF ENERGY EFFICIENCY
AND RENEWABLE ENERGY, DEPARTMENT OF ENERGY; JENNIFER M.
GRANHOLM, SECRETARY, U.S. DEPARTMENT OF ENERGY,

Respondents.

On Petitions for Review of Final Rules of the
U.S. Department of Energy

**DECLARATIONS ADDENDUM TO PETITIONERS' JOINT OPENING
BRIEF**

Dated: April 9, 2024

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Respondents.

**DECLARATION OF RODNEY DILL IN SUPPORT OF PETITIONER
AMERICAN PUBLIC GAS ASSOCIATION'S PETITIONS FOR REVIEW
OF FINAL RULES**

I, Rodney Dill, declare as follows:

1. My name is Rodney Dill, and I am the Vice President of Market Development for the Municipal Gas Authority of Georgia ("Gas Authority"). I am over the age of eighteen, have personal knowledge of the subject matter, and am competent to testify concerning the matters in this declaration.

2. I have experience with multiple energy applications and appliances through work with gas utilities, research organizations,

technology developers, and appliance manufacturers. And I have worked for the Gas Authority since April 1994 and am approaching my 30-year anniversary with the Gas Authority.

3. The Gas Authority is the largest non-profit natural gas joint action agency in the United States, serving 83 Member utilities in Georgia, Alabama, Florida, Pennsylvania, and Tennessee that distribute natural gas at retail to more than 270,000 customers as of December 31st, 2023. The Gas Authority performs tasks necessary to the operation of a retail natural gas utility jointly on behalf of its members, including natural gas acquisition for resale, gas transportation management, and load forecasting.

4. The Gas Authority is a member of the American Public Gas Association (“APGA”). Its members are also members of APGA.

5. APGA is representing Gas Authority’s interests by seeking review of the Department of Energy’s Final Action publishing three Final Rules: (1) Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notification of Final Interpretive Rule, 86 Fed. Reg. 73,947 (Dec. 29,

2021); (2) Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment, 88 Fed. Reg. 69,686 (Oct. 6, 2023); and (3) Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces, 88 Fed. Reg. 87,502 (Dec. 18, 2023).

6. Together, the Final Rules would ban noncondensing consumer furnaces and commercial water heaters from the market by imposing efficiency standards that only condensing appliances can achieve. The Department admits this will result in some consumers switching from gas-fired appliances to electric appliances.


7. That would severely harm the Gas Authority, its Members, and the customers they serve because it will eliminate consumer choice for a category of efficient natural gas appliances, reducing gas utility revenues through fuel-switching and increasing customer energy costs.

8. If the Final Rules challenged here are vacated, the Gas Authority, its Members, and the customers they serve will not suffer these financial harms.

9. Finally, the Final Rules will harm customers of the Gas Authority's Members. Many Gas Authority Members serve customers who use noncondensing furnaces and water heaters. Those consumers will be negatively impacted by the loss of noncondensing appliances, given their unique benefits. In particular, consumers that currently use noncondensing appliances will be forced to choose between expensive renovations or switching to an electric appliance if the Final Rules take effect.

10. I, Rodney Dill, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: April 6, 2024.



[Signature]

**IN THE UNITED STATES COURT OF APPEALS
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AMERICAN GAS ASSOCIATION; AMERICAN PUBLIC GAS
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Respondents.

**DECLARATION OF ALEX GALLARD IN SUPPORT OF PETITIONER
NATIONAL PROPANE GAS ASSOCIATION'S
PETITIONS FOR REVIEW OF FINAL RULES**

I, Alex Gallard, declare as follows:

1. My name is Alex Gallard, and I am In-House Counsel of Blue Star Gas. I am over the age of eighteen, have personal knowledge of the subject matter, and am competent to testify concerning the matters in this declaration.

2. I have a Juris Doctor from the University of Pacific McGeorge School of Law. And I have worked for Blue Star Gas since February 2010. I

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have substantial experience in and understanding of Blue Star Gas's residential and commercial operations involving the marketing and distribution of propane and propane-related appliances and services.

3. Blue Star Gas is a member of the National Propane Gas Association ("NPGA").

4. Blue Star Gas is a full-service residential propane provider. Blue Star Gas sells, installs, and services propane appliances, provides suburban and rural residential propane delivery and refills, and installs underground gas piping.

5. I am providing this declaration in support of NPGA's petitions for review of the Department of Energy's Final Action in publishing two Final Rules: (1) Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment, 88 Fed. Reg. 69,686 (Oct. 6, 2023); and Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces, 88 Fed. Reg. 87,502 (Dec. 18, 2023).

6. Together, these rules would ban noncondensing appliances by imposing efficiency standards that only condensing appliances can achieve.

noncondensing, propane-fired appliances and sells propane gas for use in those appliances. The challenged rules would harm Blue Star Gas by eliminating noncondensing furnaces and water heaters that Blue Star Gas sells, installs, and services. The challenged rules would also reduce demand for propane, which Blue Star Gas sells and delivers. The challenged rules would therefore harm Blue Star Gas by eliminating or reducing important and irreplaceable revenue streams.

8. The challenged rules would also harm Blue Star Gas's customers who use propane-fired noncondensing furnaces and water heaters. Those consumers will be negatively impacted by the loss of noncondensing appliances, given their unique benefits. In particular, consumers that currently use noncondensing furnaces will be forced to choose between expensive renovations, or switching to an electric appliance if the rules take effect.

9. If the challenged rules are vacated, neither Blue Star Gas nor its customers will suffer these harms.

10. I, Alex Gallard, declare under penalty of perjury under the laws
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of the United States that the foregoing is true and correct to the best of my
knowledge.

Dated: April 2, 2024



[Signature]

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GRANHOLM, SECRETARY, U.S. DEPARTMENT OF ENERGY,

Respondents.

**DECLARATION OF SEAN P JAMIESON IN SUPPORT OF
PETITIONERS SPIRE INC., SPIRE ALABAMA INC., AND SPIRE
MISSOURI INC.'S PETITION FOR REVIEW OF FINAL RULE**

I, Sean P. Jamieson, declare as follows:

1. My name is Sean P. Jamieson, and I am the Vice President, Federal Affairs of Spire Inc., which is the parent company of Spire Alabama Inc. and Spire Missouri Inc. (collectively "Spire"). I am over the age of eighteen, have personal knowledge of the subject matter, and am competent to testify concerning the matters in this declaration.

2. I am providing this declaration in support of Spire's petition for review of the Department of Energy's Final Rule titled Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notification of Final Interpretive Rule, 86 Fed. Reg. 73,947 (Dec. 29, 2021).

3. This Final Rule advances an interpretation of the Energy Policy and Conservation Act that would allow the Department to ban noncondensing consumer furnaces and commercial water heaters from the market through the imposition of efficiency standards that only condensing appliances can achieve. The Department admits this will result in some consumers switching from gas-fired appliances to electric appliances.

4. The Final Rule would thus harm Spire because it will reduce demand for natural gas.

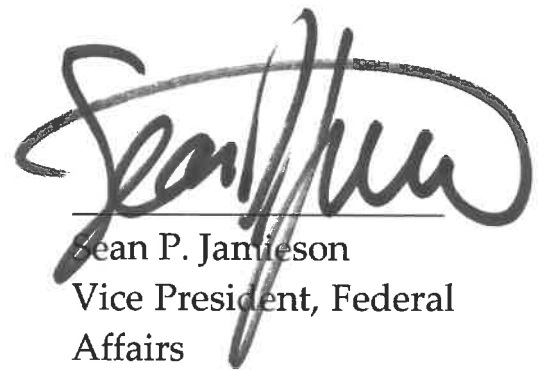
5. Spire Inc., a member of the American Gas Association, owns and operates natural gas distribution companies, including Spire Alabama Inc. and Spire Missouri Inc., serving approximately 1.2 million residential, commercial, and institutional customers.

6. The reduction in demand for natural gas would harm Spire by adversely impacting the sales and revenues of Spire's distribution companies. The Final Rule will also impose unjustified costs on Spire's consumers, many of whom use noncondensing appliances and would incur significant costs if forced to install condensing appliances.

7. If the Final Rule challenged here is vacated, neither Spire's customers nor Spire itself will suffer these harms.

8. I, Sean P. Jamieson, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: April 9, 2024.



Sean P. Jamieson
Vice President, Federal
Affairs
Spire Inc.

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Respondents.

DECLARATION OF ALLEN KUEHL IN SUPPORT OF PETITIONER
AMERICAN PUBLIC GAS ASSOCIATION'S
PETITION FOR REVIEW OF FINAL RULES

I, Allen Kuehl, declare as follows:

1. My name is Allen Kuehl, and I am the President of Thermo Products, LLC ("Thermo"). I am over the age of eighteen, have personal knowledge of the subject matter, and am competent to testify concerning the matters in this declaration.

2. I have a Masters Degree from Indiana Wesleyan University in Business Administration. And I have worked for Thermo since August 29th

1988. I have substantial experience in and understanding of Thermo's operations and product offerings.

3. Thermo Products, LLC, makers of Thermo Pride HVAC equipment, has a heritage of superior workmanship, product innovation and small-town work ethic. Committed to handcrafted products and hometown values like comfort, reliability, durability, quiet operation and high efficiency, Thermo Pride offers affordable alternatives to mass-produced compromises between quality and price.

4. I am providing this declaration in support of Thermo's and APGA's petitions for review of the Department of Energy's Final Action in publishing two Final rules: the "Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notification of Final Interpretive Rule," 86 Fed. Reg. 73947 (Dec. 29, 2021); the "Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces," 88 Fed. Reg. 87,502 (Dec. 18, 2023). I further provide this declaration in support of APGA's petition for review the Department of Energy's Final Rule titled: the

"Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment," 88 Fed. Reg. 69686 (Oct. 6, 2023).

5. Together, the three Final Rules would ban noncondensing appliances by imposing efficiency standards that only condensing appliances can achieve.

6. This would harm Thermo, which manufactures and sells residential furnaces, including noncondensing furnaces. Thermo's noncondensing furnaces do not comply with the new standards, and it is not possible to redesign them to comply. If the Final Rule goes into effect, Thermo will therefore be barred from manufacturing noncondensing furnaces.


7. Thermo would therefore face interrupted and possibly lost revenue streams, be forced to abandon current product designs, toolings, and processes in which it has invested large amounts of capital, and make time-consuming, expensive, and difficult to reverse changes to our operation. Certain market segments of the industry as a whole would terminate through entire product lines being banned as a result of the Final

Rule including approximately 31% of Thermo's sales in those certain segments.

8. If APGA's legal challenge is this Court is successful and the Final Rules challenged here are vacated, Thermo will not need to comply with the Final Rule's heightened energy conservation requirements, and these financial harms will be redressed.

9. I, Allen Kuehl, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: April 4, 2024.



Allen Kuehl

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Respondents.

**DECLARATION OF RENEE M. LANI IN SUPPORT OF PETITIONER
AMERICAN PUBLIC GAS ASSOCIATION'S PETITIONS FOR REVIEW
OF FINAL RULES**

I, RENEE M. LANI, declare as follows:

1. I am the General Counsel of the American Public Gas Association ("APGA"). I am over the age of eighteen, have personal knowledge of the subject matter, and am competent to testify concerning the matters in this declaration.

2. I have a Bachelor of Science from the Pennsylvania State University in Chemical Engineering; a Bachelor of Science from the

Pennsylvania State University in Energy, Business and Finance; and a Juris Doctor from the University of Maryland, Baltimore - Francis King Carey School of Law. I have worked for APGA since April 2020. I have substantial experience with and understanding of APGA's members and their operations.

3. APGA is the national trade association representing the retail gas distribution entities in the United States owned by local governments, including municipal gas distribution systems, public utility districts, county districts, and other public agencies. There are approximately 1,000 publicly-owned gas systems in the United States. The business of APGA's members is selling and distributing gas to retail customers.

4. APGA's approximately 740 members in 38 states serve almost 5 million meters, including residential and commercial end-users, many of which use natural gas to fuel residential furnaces or commercial water heaters.

5. I am providing this declaration in support of APGA's petitions for review of the Department of Energy's Final Action publishing three Final

Rules: (1) Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notification of Final Interpretive Rule, 86 Fed. Reg. 73,947 (Dec. 29, 2021); (2) Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment, 88 Fed. Reg. 69,686 (Oct. 6, 2023); and (3) Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces, 88 Fed. Reg. 87,502 (Dec. 18, 2023).

6. Together, the Final Rules would eliminate noncondensing consumer furnaces and noncondensing commercial water heaters from the market by imposing efficiency standards that these appliances cannot achieve. The Department admits the Final Rules will result in some consumers switching from gas-fired appliances to electric appliances.

7. That would directly harm APGA's members because it will reduce demand for gas.

8. APGA's membership includes gas distribution systems that supply natural gas to consumers. Reducing demand for gas would harm those members because it will reduce the amount of gas sold by APGA

members. The Final Rules are not economically justified and will therefore impose unjustified losses of sales and revenue on APGA members. If the Final Rules challenged here are vacated, APGA's members will not suffer these financial harms.

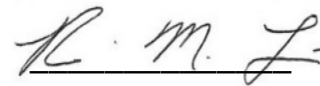
9. Additionally, the Final Rules will harm customers of APGA members. APGA members serve customers who use gas-fired noncondensing furnaces and noncondensing commercial water heaters. Those consumers will be negatively impacted by the loss of these noncondensing appliances, given their unique performance characteristics and features. In particular, consumers that currently use these noncondensing appliances will be forced to choose between expensive and disruptive building renovations or switching to an electric appliance if the Final Rules take effect. Because the Final Rules are not economically justified, they will impose unjustified costs to APGA members' customers in the form of renovations and loss of utility.

10. APGA advocates for community-owned gas distribution systems, promoting safety, security, competitiveness, and sustainability. In

fulfilling its purposes of promoting the mutual improvement of its members and advancing the common purposes of its members, APGA has an interest in promoting fair rules for the operation of gas-related markets in which APGA members and their customers participate. APGA opposes unlawful administrative interference with these markets that would impose unnecessary costs and burdens on APGA members and their customers. The interests of its members that APGA seeks to protect in these cases are germane to its purpose, and the participation of individual members is unnecessary for APGA to represent their interests here.

11. I, Renee M. Lani, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: April 3, 2024.

A handwritten signature in cursive script, appearing to read "R. M. Lani", written over a horizontal line.

[Signature]

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GRANHOLM, SECRETARY, U.S. DEPARTMENT OF ENERGY,

Respondents.

**DECLARATION OF RICHARD MEYER IN SUPPORT OF PETITIONER
AMERICAN GAS ASSOCIATION'S PETITIONS FOR REVIEW OF
FINAL RULES**

I, RICHARD MEYER, declare as follows:

1. My name is RICHARD MEYER. I am over the age of eighteen, have personal knowledge of the subject matter, and am competent to testify concerning the matters in this declaration.

2. I have degrees from California Polytechnic University and American University. I serve as the Vice President for the American Gas Association ("AGA") and lead its Energy Analysis department. I have been

with AGA since 2010. My responsibilities include reviewing and analyzing data used by the Department of Energy in support of energy conservation or efficiency standards for natural gas appliances.

3. I am providing this declaration in support of AGA's petitions for review of the Department of Energy's Final Action in publishing three Final Rules: (1) Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notification of Final Interpretive Rule, 86 Fed. Reg. 73,947 (Dec. 29, 2021); (2) Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment, 88 Fed. Reg. 69,686 (Oct. 6, 2023); and (3) Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces, 88 Fed. Reg. 87,502 (Dec. 18, 2023).

4. I have reviewed the data in the Lifecycle Cost Savings analysis that the Department performed for the Consumer Furnace Rule, Consumer Furnace Life-Cycle Cost (LCC) Results Spreadsheet, CF.CI-4104, and the Lifecycle Cost Savings analysis the Department performed for the Commercial Water Heater Rule, Commercial Water Heater (CWH) Life-

Cycle Cost (LCC) and Payback Period Analysis Spreadsheet (Final Rule), CWH.CI-40. The Department conducted a similar Lifecycle Cost Savings analysis in both the proposed and final rules. But the specific inputs and outputs—and accordingly the Department's projected cost savings—differed between the proposed and final rules. I therefore reviewed the Department's updated Lifecycle Cost Savings analysis in the final Consumer Furnace Rule.

5. **80% of the noncondensing non-weatherized gas furnaces assigned to new buildings in the Department's base case/"no-new standards" case for the Consumer Furnace Rule are at a higher cost to the builders than other options.** The model assigned non-condensing (EL0) natural gas non-weatherized furnaces to 499 trials. Of those 499 trials, 101 (20%) coincided with the lowest installation and purchase costs for the builder. The remaining 398 trials (80%) would have cost the builders more money to purchase and install than more efficient options. This information is available by reviewing the data in Columns A, RQ, AEQ, TE-TI, and AFD-

AFH of the “Data” sheet available in the Consumer Furnace Life-Cycle Cost (LCC) Results Spreadsheet, CF.CI-4104.

6. If the Department’s base case assigned non-weatherized gas furnaces in new buildings according to which kind of furnace had the lowest installation cost to builders, the life-cycle-cost savings for the Consumer Furnace Rule would drop by \$233,241 (12%), from \$1,922,352 to \$1,689,111. Of the 10,000 buildings in the Department’s base case model, 2,030 were new construction. The total net savings that the Department calculated from the Consumer Furnace Rule are \$1,922,352 and \$899,306 without fuel switching. The Department projected that the new standards would produce \$507,374 and \$482,640 without fuel switching, in savings by forcing all new buildings to switch to condensing furnaces. But if the base case model had rationally (rather than randomly) assigned furnaces to new construction, without modeling for fuel switching, those savings would drop by almost half, to \$274,133. This information is available by reviewing the data in Columns A, RQ, WQ-WU, XW, YE, AEQ, TE-TI, and AFD-AFH,

of the “Data” sheet available in the Consumer Furnace Life-Cycle Cost (LCC) Results Spreadsheet, CF.CI-4104.

7. **60% of the non-weatherized gas furnaces assigned to existing homes and buildings in the Department’s base case/“no-new standards” case for the Consumer Furnace Rule are at a higher cost to owners than other options.** The model included 7,970 trials for existing buildings. Of those, only 3,164 (40%) were assigned the lowest cost option, without modeling for fuel switching, indicating that more than half of all base case EL assignments in replacement trials were assigned an EL that was not the lowest modeled LCC. 3,334 of the 7,970 trials for existing buildings were assigned non-condensing non-weatherized gas furnaces (EL0). Of those, 1,378 (41%) trials were assigned EL0 when it was not the lowest LCC among the options modeled. 3,310 trials for replacement cases were assigned standard-compliant EL3 condensing non-weatherized gas furnaces. Of the replacement cases assigned an EL3, it would have been more cost-effective to install noncondensing (EL0) furnaces in 1,456 (44%) of the trials. This information is available by reviewing the data in columns A, RQ, AEQ, and

WQ-WU of the “Data” sheet available in the Consumer Furnace Life-Cycle Cost (LCC) Results Spreadsheet, CF.CI-4104.

8. If the Department’s base case had assigned non-weatherized gas furnaces in existing buildings according to which kind of furnace was the most cost effective in terms of life-cycle-cost, the life-cycle-cost savings for the Consumer Furnace Rule would go from *saving* consumers \$1,414,978 to *costing* them \$2,538,205. The total net savings that the Department calculated from the Consumer Furnace Rule are \$1,922,352 and \$899,306 without fuel switching. The Department projected that the new standards would produce \$1,414,978 in savings by forcing all existing buildings to switch to standard-compliant condensing furnaces (including fuel switching). But if the base case model had rationally (rather than randomly) assigned furnaces without fuel switching to existing buildings, those savings would drop to negative \$2,538,205. This information is available by reviewing the data in columns A, RQ, XW, YE, AEQ, and WQ-WU of the “Data” sheet available in the Consumer Furnace Life-Cycle Cost (LCC) Results Spreadsheet, CF.CI-4104.

9. 53% of the total purported LCC savings from the Consumer Furnace Rule come from switching fuel from gas to electric appliances.

The total net savings that the Department calculated from the Consumer Furnace Rule are \$1,922,352. Without fuel switching, DOE projected that for all 10,000 trials, the total net life-cycle-cost savings would be \$899,306. The Department therefore projected that fuel-switching would result in total savings of \$1,023,046 (\$1,922,352 - \$899,306). Thus, 53% of the Department's projected total life-cycle-cost savings are due to fuel switching. Column AIC of the "Data" sheet for CI- identifies the instances where the Department projected that consumers in the 10,000 building model would fuel switch to electric appliances because that would be the lowest cost option. In total, the Department assumes that 9% of consumers will switch to electric appliances under the new standards. This information is available by reviewing the data in columns A, RQ, XW, YE, and AIC of the "Data" sheet available in the Consumer Furnace Life-Cycle Cost (LCC) Results Spreadsheet, CF.CI-4104.

10. I attempted to conduct a similar review of the Department's life-cycle-cost analysis for the Commercial Water Heater Rule. But the

Department's life-cycle-cost spreadsheet for that rule did not include the Department's raw modelled data output. Without that data, meaningful review is impossible. My review of the Department's conclusions, however, confirms that the Department's use of random assignment necessarily assigned unnecessarily expensive water heaters to certain buildings.

11. I, RICHARD MEYER, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: April 8, 2024.


[Signature]

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Respondents.

**DECLARATION OF MICHAEL L. MURRAY IN SUPPORT OF
PETITIONER AMERICAN GAS ASSOCIATION'S PETITIONS FOR
REVIEW OF FINAL RULES**

I, Michael L. Murray, declare as follows:

1. My name is Michael L. Murray, and I am the General Counsel of the American Gas Association ("AGA"). I am over the age of eighteen, have personal knowledge of the subject matter, and am competent to testify concerning the matters in this declaration.

2. I have worked for AGA since April, 2001. I have substantial experience in and understanding of AGA's Internal Revenue Code §

501(c)(6) tax-exempt status, Delaware corporate non-profit status, bylaws, membership and membership requirements, and AGA's operations.

3. I am providing this declaration in support of AGA's petitions for review of the Department of Energy's Final Action in publishing three Final Rules: (1) Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notification of Final Interpretive Rule, 86 Fed. Reg. 73,947 (Dec. 29, 2021); (2) Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment, 88 Fed. Reg. 69,686 (Oct. 6, 2023); and (3) Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces, 88 Fed. Reg. 87,502 (Dec. 18, 2023).

4. Founded in 1918, AGA educates the public about the importance of natural gas, supports natural gas utilities in their efforts to make their operations safer, more efficient, and more environmentally friendly, and serves as a resource for local, state and federal policymakers when it comes to regulating the natural gas industry.

5. AGA has over 200 members, which include companies from all sectors of the natural gas industry. AGA's membership includes energy utility companies, transmission and marketing companies, exploration and production companies, product and service companies, and industry associates. AGA product and service company members are manufacturing and service companies that share the common purpose of studying and reporting on matters related to the design, manufacture and sale of gas equipment, apparatus, supplies and/or services used in or by gas distribution and transmission industries. At least one product and service company AGA member is a company that manufactures commercial water heaters.

6. Together, the three Final Rules would ban noncondensing consumer furnaces and commercial water heaters from the market by imposing efficiency standards that only condensing appliances can achieve. That will harm AGA's members.

7. The Department admits that the Final Rules will result in many consumers switching from gas-fired appliances to electric appliances. That

will reduce demand for natural gas. AGA's membership includes utility companies that supply natural gas to consumers, companies that transmit gas to utility companies, and companies that produce natural gas. Any reduction in demand for natural gas would harm those members. If the Final Rules challenged here are vacated, AGA's members will not suffer these financial harms.

8. The Final Rules will harm customers of AGA members. Many AGA members serve customers who use noncondensing furnaces and water heaters. Those consumers will be negatively impacted by the loss of noncondensing products, given their unique benefits. In particular, consumers that currently use noncondensing furnaces and water heaters will be forced to choose between expensive renovations, moving to a different building, or switching to an electric appliance if the rules take effect.

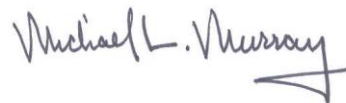
9. Additionally, as previously mentioned, AGA has at least one member company that manufactures commercial water heaters, including noncondensing water heaters. That member's noncondensing water heaters

do not comply with the new standards, and it is not possible to redesign them to comply. If the Final Rules go into effect, consumers will no longer buy that member's noncondensing water heaters.

10. That AGA member would therefore lose revenue streams, be forced to abandon current non-condensing furnace product designs and processes in which it has invested large amounts of money, and be obligated to make irreversible changes to its operations.

11. I, Michael L. Murray, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: April 5, 2024.

A handwritten signature in blue ink that reads "Michael L. Murray" followed by a stylized flourish.

Michael L. Murray

Nos. 22-1030; 23-1285; 23-1337

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

AMERICAN GAS ASSOCIATION; AMERICAN PUBLIC GAS
ASSOCIATION; NATIONAL PROPANE GAS ASSOCIATION; THERMO
PRODUCTS, LLC; SPIRE INC., SPIRE ALABAMA INC.; SPIRE MISSOURI
INC.

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY; OFFICE OF ENERGY EFFICIENCY
AND RENEWABLE ENERGY, DEPARTMENT OF ENERGY; JENNIFER M.
GRANHOLM, SECRETARY, U.S. DEPARTMENT OF ENERGY,

Respondents.

**DECLARATION OF BENJAMIN NUSSDORF IN SUPPORT OF
PETITIONER NATIONAL PROPANE GAS ASSOCIATION'S
PETITIONS FOR REVIEW OF FINAL RULES**

I, Benjamin Nussdorf, declare as follows:

1. My name is Benjamin Nussdorf, and I am the General Counsel of the National Propane Gas Association. I am over the age of eighteen, have personal knowledge of the subject matter, and am competent to testify concerning the matters in this declaration.

2. I have a J.D. from American University, Washington College of Law. And I have worked for NPGA since October, 2022. I have substantial

experience in and understanding of NPGA's membership and their operations

3. NPGA is the national trade association representing and advocating for the U.S. propane and renewable propane industries. NPGA's members include small businesses and large corporations engaged in the retail marketing of propane gas and appliances; producers, wholesalers, and dispensers of propane; fabricators of propane gas cylinders, tanks, and trucks; propane transporters; and services providers of all types.

4. NPGA represents more than 2,400 members spread across all 50 states and 36 affiliated state or regional associations.

5. I am providing this declaration in support of NPGA's petitions for review of the Department of Energy's Final Action in publishing two Final Rules: (1) Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment, 88 Fed. Reg. 69,686 (Oct. 6, 2023); and Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces, 88 Fed. Reg. 87,502 (Dec. 18, 2023).

6. Together, these rules would ban noncondensing consumer furnaces and commercial water heaters from the market by imposing efficiency standards that only condensing appliances can achieve.

7. That would severely harm NPGA's members because it will reduce demand for propane.

8. NPGA's membership includes businesses producing, selling, and dispensing propane gas and propane-fired appliances. Any reduction in demand for propane or propane-fired appliances would harm those members. If the Final Rules challenged here are vacated, NPGA's members will not suffer these financial harms.

9. Finally, the Final Rules will harm customers of NPGA members. Many NPGA members serve customers who use propane-fired noncondensing furnaces and water heaters. Those consumers will be negatively impacted by the loss of noncondensing appliances, given their unique benefits. In particular, consumers that currently use noncondensing furnaces will be forced to choose between expensive renovations, moving to

a different building, or switching to an electric appliance if the rules take effect.

10. I, Benjamin Nussdorf, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated: April 2, 2024.



Benjamin Nussdorf
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