No. 08-212

IN THE

Supreme Court of the United States

EXXON MOBIL CORPORATION,

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF IN OPPOSITION FOR WILLIAMS ALASKA PETROLEUM INC.

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QUESTION PRESENTED

Whether Congress violates the separation of powers when it amends existing law in a statute that establishes one legal standard for an administrative agency to apply in pending cases and a different legal standard for the agency to apply in subsequently filed cases.

RULE 29.6 STATEMENT

Williams Alaska Petroleum Inc. is a wholly-owned subsidiary of Williams Express, Inc., a non-public entity, which in turn is owned by The Williams Companies, Inc. The Williams Companies, Inc. is the only publicly traded company that owns a ten percent or greater interest in Williams Alaska Petroleum Inc.

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BRIEF IN OPPOSITION FOR WILLIAMS ALASKA PETROLEUM INC.

Respondent Williams Alaska Petroleum Inc. ("Williams") respectfully submits this brief in opposition to the petition for a writ of certiorari filed by Exxon Mobil Corporation.

OPINIONS BELOW

The unpublished opinion of the court of appeals is reported at 268 F. App'x 7. Pet. App. 1a. The underlying opinions of the Federal Energy Regulatory Commission ("FERC") are published at 113 F.E.R.C. ¶ 61,062 (Pet. App. 89a), 114 F.E.R.C. ¶ 61,323 (Pet. App. 28a), and 115 F.E.R.C. ¶ 61,287 (Pet. App. 8a).

JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT

Petitioner asks this Court to break new ground by granting review in this case and holding that the Constitution prohibits Congress from amending existing law in a statute that establishes different legal standards for pending and subsequently filed cases. Doing so would require this Court to overrule a settled line of precedent establishing that the separation of powers does not prevent Congress from "'amend[ing] applicable law'" governing pending cases. *Miller v. French*, 530 U.S. 327, 349 (2000) (quoting *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429, 441 (1992)). Petitioner provides no conceivable basis for revisiting this longstanding line of authority—let alone, the "special justification" that would be required to rewrite constitutional law in

this area. *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984).

The petition for a writ of certiorari should be denied.

1. The Trans Alaska Pipeline System ("TAPS") is the sole means of shipping petroleum produced on the North Slope of Alaska to the port of Valdez, Alaska. *See generally Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286 (D.C. Cir. 2000); *OXY USA, Inc. v. FERC*, 64 F.3d 679 (D.C. Cir. 1995). TAPS commingles the various shippers' petroleum in a single pipeline. *OXY USA, Inc.*, 64 F.3d at 684. Due to commingling and to refiners' removal of parts of certain petroleum components before the petroleum reaches Valdez, the petroleum that shippers receive at the Valdez terminus is not necessarily of the same quality as the petroleum they tender into the TAPS. *Id.* To account for this commingling, FERC approved an accounting arrangement known as the TAPS Quality Bank that makes monetary adjustments among TAPS users. *Id.* The TAPS Quality Bank imposes an assessment on shippers of relatively lower-quality petroleum who benefit from commingling, as well as on refiners who remove portions of higher-valued components of petroleum from the pipeline, and distributes the proceeds to shippers of higher-quality petroleum who receive a lower-quality product when the petroleum arrives at Valdez. *Id.*

2. For more than fifteen years, petroleum shippers and refiners have been engaged in litigation before FERC regarding the valuation that the TAPS Quality Bank should apply to various petroleum products. In 1993, FERC approved a new distillation-based valuation methodology for the TAPS Quality Bank to apply on a going-forward basis. 65

F.E.R.C. ¶ 61,277 (1993). The D.C. Circuit substantially upheld this valuation methodology but remanded the case to FERC to reconsider the methodology to be applied to certain of the petroleum components. *OXY USA*, 64 F.3d at 701. On remand, FERC amended these valuations, which the D.C. Circuit subsequently upheld in large part. *Exxon Co., USA v. FERC*, 182 F.3d 30, 34 (D.C. Cir. 1999). In that 1999 decision, the D.C. Circuit held, for the first time, that FERC should consider applying these amended valuations retroactively back to 1993. *Id.* at 50.

A FERC Administrative Law Judge ("ALJ") thereafter altered his previous position that retroactive adjustments would not be permitted. The ALJ's order applied the amended valuation for the Resid component of petroleum to all TAPS petroleum shipments dating back to December 1, 1993, and required the payment of refunds to shippers who had been underpaid during that period. Pet. App. 165a.

While the ALJ's decision was pending on review before FERC, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"), Pub. L. No. 109-59, 119 Stat. 1144 (2005). Section 4412 of SAFETEA-LU amended the law governing refunds in TAPS Quality Bank proceedings. Section 4412(b)(1) provides that, "[i]n a proceeding commenced before the date of enactment of this Act," FERC "may not order retroactive changes in TAPS quality bank adjustments for any period before February 1, 2000." 119 Stat. at 1778-79. Section 4412(b)(2) provides that, in subsequently filed cases, FERC "may not order retroactive changes in TAPS quality bank adjustments for any period that exceeds the 15-month period immediately preceding the ear-

liest date of the first order of the [FERC] imposing quality bank adjustments in the proceeding." *Id.* at 1779.

Applying the new legal standard established by Section 4412(b)(1), FERC ordered that petitioner and other shippers were entitled to refunds of certain TAPS Quality Bank valuations dating back to February 1, 2000. Pet. App. 191a-92a.

3. Petitioner and several other petroleum shippers filed petitions for review of FERC's order in the D.C. Circuit. Among other objections to the order, petitioner argued that SAFETEA-LU violated the separation of powers because it "reversed the administrative law judge's decision . . . to make FERC's [valuations] retroactive to 1993." Pet. App. 4a.

The D.C. Circuit denied the petitions for review. Pet. App. 1a. In so doing, the court of appeals rejected petitioner's constitutional challenge to SAFETEA-LU based on its earlier decision in *National Coalition to Save Our Mall v. Norton*, 269 F.3d 1092 (D.C. Cir. 2001), *cert. denied*, 537 U.S. 813 (2002). Pet. App. 4a. That decision had held that, under this Court's reasoning in *Robertson v. Seattle Audubon Society*, 503 U.S. 429 (1992), Congress does not violate the separation of powers when it "amends the applicable substantive law" governing pending proceedings. *Nat'l Coalition*, 269 F.3d at 1097.

REASONS FOR DENYING THE PETITION

The D.C. Circuit's decision upholding Section 4412 of SAFETEA-LU is consistent with this Court's settled separation-of-powers jurisprudence. Those decisions make clear that, although Congress may not "prescribe rules of decision to the Judicial Department" (*United States v. Klein*, 80 U.S. (13 Wall.) 128, 146 (1871)), this "prohibition does not take hold

when Congress amend[s] applicable law." *Miller v. French*, 530 U.S. 327, 349 (2000) (alteration in original; internal quotation marks omitted). Because Section 4412 amended the law governing refunds in pending and subsequently filed TAPS Quality Bank proceedings, the D.C. Circuit's decision rejecting petitioner's constitutional challenge falls squarely within this established separation-of-powers framework. Indeed, the court of appeals' decision was *compelled* by this Court's decision in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), which held that Congress does not violate the separation of powers when it enacts a statute that establishes one legal standard for pending cases and a different legal standard for subsequently filed cases.

Petitioner offers no plausible basis for reconsidering this settled line of authority, which has been consistently and uniformly applied by the lower courts. Moreover, even if there were a reason to revisit the *Klein* line of decisions, this case would be a singularly poor vehicle for doing so because, in rejecting petitioner's arguments, neither FERC nor the D.C. Circuit apparently deemed it necessary to authoritatively construe the newly enacted TAPS refund provisions that petitioner challenges. The radical reworking of separation-of-powers principles sought by petitioner should not be considered against this unsettled statutory backdrop.

I. THE DECISION BELOW IS CONSISTENT WITH THE DECISIONS OF THIS COURT AND EVERY OTHER CIRCUIT.

Petitioner contends that the D.C. Circuit's decision rejecting its constitutional challenge to Section 4412 of SAFETEA-LU conflicts with *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), and its progeny,

as well as with lower-court decisions interpreting the *Klein* line of cases. Petitioner's purported conflict is illusory.

A. The Decision Below Correctly Applies The *Klein* Line Of Cases.

1. In *Klein*, the Court held that Congress violated the separation of powers when it enacted a statute that provided that a presidential pardon represented conclusive proof of a claimant's disloyalty in suits seeking to recover the value of property seized during the Civil War. 80 U.S. (13 Wall.) at 146. The claimant in *Klein* had prevailed in the Court of Claims under previously applicable law, which provided that a pardon satisfied the claimant's burden of proving that he had not aided the Confederacy, and this Court concluded that the statute that purported to change that result was unconstitutional because it impermissibly "prescribe[d] rules of decision to the Judicial Department of the government in cases pending before it." *Id.*

This Court has subsequently explained that, "[w]hatever the precise scope of *Klein*, . . . its prohibition does not take hold when Congress amend[s] applicable law." *Miller v. French*, 530 U.S. 327, 349 (2000) (alterations in original; internal quotation marks omitted). In *Robertson v. Seattle Audubon Society*, 503 U.S. 429 (1992), for example, the Court rejected a separation-of-powers challenge to a statute that deemed compliance with newly promulgated restrictions on forest harvesting sufficient to establish compliance with the laws at issue in two pending suits challenging harvesting of the spotted owl's habitat. *Id.* at 441. The Court held that the newly enacted statute "compelled changes in law, not findings or results under old law," and thus did not im-

plicate *Klein*'s prohibition on congressional "rules of decision" in pending cases. *Id.* at 438.

Similarly, in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), the Court rejected a *Klein*-based challenge to a statute that retroactively altered the statute of limitations in cases pending at the time this Court decided *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991), which had held that the statute of limitations for federal securities fraud claims is one year after discovery of the facts constituting the violation and three years after the violation. *Plaut*, 514 U.S. at 218. The newly enacted statute provided for the application of the pre-*Lampf* statute of limitations in cases pending at the time *Lampf* was decided (even if the case had already been closed) and the application of the *Lampf* standard in subsequently filed cases. *Id.* at 214. Notwithstanding Congress's retroactive change in the law applicable in pending (and already closed cases), the Court held that the statute did not, for that reason, violate the separation of powers because it "indisputably . . . set out substantive legal standards for the Judiciary to apply, and in that sense change[d] the law (even if solely retroactively)." *Id.* at 218; *see also Miller*, 530 U.S. at 349 (rejecting a *Klein*-based challenge to a statute that established new legal standards to be applied to pending injunctions regarding prison conditions).[1]

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[1] Although the Court in *Plaut* concluded that the statute was consistent with the rule articulated in *Klein*, the Court nevertheless held that it contravened Article III of the Constitution by "retroactively commanding the federal courts to reopen final judgments." *Plaut*, 514 U.S. at 219. SAFETEA-LU, in contrast, did not require FERC to reopen TAPS Quality Bank proceedings that were final at the time of the statute's enactment. In-

The D.C. Circuit's decision upholding Section 4412 of SAFETEA-LU fits squarely within the *Klein* line of cases. Section 4412(b) established one standard for refunds of TAPS Quality Bank adjustments in cases pending at the time of its enactment and another standard for refunds in subsequently filed cases. Relying on its earlier decision in *National Coalition to Save our Mall v. Norton*, 269 F.3d 1092 (D.C. Cir. 2001), *cert. denied*, 537 U.S. 813 (2002), the D.C. Circuit rejected petitioner's separation-of-powers challenge to Section 4412 because the statute "amends the applicable substantive law" governing refunds in TAPS Quality Bank proceedings. *Id.* at 1097; *see also* Pet. App. 4a. This result is compelled by *Plaut*, which rejected an identical separation-of-powers challenge to a statute that retroactively amended the statute of limitations for cases pending at the time *Lampf* was decided while leaving undisturbed a different statute of limitations for cases filed after *Lampf*. As this Court has consistently reiterated, *Klein*'s separation-of-powers restrictions are inapplicable to such "amend[ments]" of "applicable law." *Miller*, 530 U.S. at 349.[2]

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deed, when SAFETEA-LU was enacted, there had not even been a final agency adjudication in this case awarding retroactive Quality Bank adjustments back to 1993. There had only been an *initial* decision by an ALJ, which was neither final nor binding because the parties had filed exceptions to it with FERC. *Cf. Robertson*, 503 U.S. at 432 (rejecting a separation-of-powers challenge to a statute even though it required a district court to vacate a preliminary injunction that it had already entered).

[2] The Court also substantially clarified *Klein*'s reach in *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980), which explained that the statute in *Klein* was "unconstitutional

2. Petitioner concedes, as it must, that "the prohibition of *Klein* does not take hold when Congress amends applicable law." Pet. 12 (internal quotation marks omitted). Petitioner instead contends that "Section 4412(b)(1)"—which redefines the scope of available refunds in pending TAPS Quality Bank proceedings—"does not amend applicable law." *Id.* at 14. According to petitioner, only Section 4412(b)(2)—which governs refunds in subsequently filed TAPS Quality Bank proceedings—constitutes an amendment of the law. *Id.* But petitioner itself acknowledges that "Section 4412 *create[d] two rules* relating to [FERC's] power to order TAPS Quality Bank refunds" (*id.* at 8 (emphasis added))—one governing pending proceedings and one governing future proceedings. Those rules superseded earlier law, which the D.C. Circuit had construed to allow retroactive application of TAPS Quality Bank adjustments back to 1993. *See Exxon*, 182 F.3d at 50.

Nor does petitioner take issue with the well-established proposition that "Congress may intervene to change the results in pending cases." Pet. 13; *see also Plaut*, 514 U.S. at 226 ("When a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on

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in two respects: First, it prescribed a rule of decision in a case pending before the courts, and did so in a manner that required the courts to decide a controversy in the Government's favor." *Id.* at 404. Second, the statute was "liable to just exception as impairing the effect of a pardon, and thus infringing the constitutional power of the Executive." *Id.* at 404-05 (internal quotation marks omitted). Section 4412 of SAFETEA-LU, in contrast, neither decides a case in the government's favor nor restricts the President's constitutional authority.

appeal that were rendered before the law was enacted, and must alter the outcome accordingly.") (citing *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103 (1801)). Petitioner instead rests its entire argument on the fact that there was only one TAPS Quality Bank proceeding pending at the time that Congress enacted SAFETEA-LU. According to petitioner, Section 4412(b)(1) therefore "impermissibly directs results in a single pending adjudication under old law." Pet. 14.

Petitioner's argument is completely at odds with its own recognition that "Congress may always legislate regarding 'a legitimate class of one.'" Pet. 16 (quoting *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 472 (1977) (emphasis omitted)). In *Nixon*, the Court upheld a statute directing the Administrator of the General Services Administration to take custody of former President Nixon's presidential papers and audio recordings. *Id.* at 484. The Court rejected President Nixon's argument that Congress had impermissibly singled him out for adverse treatment, explaining that President Nixon's argument would have "establishe[d] that the Constitution is offended whenever a law imposes undesired consequences on an individual or on a class that is not defined at a proper level of generality." *Id.* at 469-70. This "view," the Court continued, "would cripple the very process of legislating, for any individual or group that is made the subject of adverse legislation can complain that the lawmakers could and should have defined the relevant affected class at a greater level of generality." *Id.* at 470. Because the papers of prior Presidents were already housed in presidential libraries, President Nixon "constituted a legitimate class of one" for purposes of federal legislative action. *Id.* at 472.

This case similarly involves a "legitimate class of one." Just as it was permissible for Congress to enact legislation that reached the only former President whose papers were not housed in a presidential library, there was no constitutional impediment to Congress's enactment of a legal standard for pending TAPS Quality Bank proceedings that reached the only such proceeding pending at the time of enactment. *See Plaut*, 514 U.S. at 239 n.9 ("Even laws that impose a duty or liability upon a single individual or firm are not on that account invalid . . . .").

Petitioner therefore fails in its effort to manufacture a conflict between the decision below and this Court's precedent. Nothing in *Klein* or its progeny prohibits Congress from enacting a statute that establishes one rule of law for pending cases and a different rule of law for subsequently filed cases—even where there is only one such case pending at the time of enactment. The D.C. Circuit's decision upholding Section 4412 is fully consistent with—and compelled by—that line of authority.[3]

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[3] Moreover, as explained at length in the brief in opposition of Petro Star Inc., far from seeking a "straightforward" application of "the rule of *Klein*" (Pet. 14), petitioner is asking this Court to extend *Klein*'s prohibition on statutes that "prescribe rules of decision to the Judicial Department" to statutes that establish "rules of decision" for proceedings before FERC and other administrative agencies. But petitioner cites no case where *Klein* has been applied to a statute governing agency proceedings and provides no basis for transplanting the unique separation-of-powers considerations that govern congressional interference with Article III courts to the agency setting. *See Glidden Co. v. Zdanok*, 370 U.S. 530, 568 (1962) (plurality opinion) ("Surely no such concern would have been manifested [in *Klein*] if it had not been thought that the Court of Claims was invested with judicial power.").

B. There Is No Conflict In The Lower Courts Regarding The *Klein* Line of Cases.

Petitioner's attempt to generate a conflict between the decision below and the decisions of other lower courts is equally unavailing.

Tellingly, petitioner does not cite even a single lower-court decision invalidating a statute under the *Klein* line of cases. Pet. 19-20. And none of the cases rejecting *Klein*-based challenges cited by petitioner endorses a reading of *Klein* that would prohibit Congress from amending the law through a statute that established one legal standard for pending cases and a different legal standard for subsequent cases. Those decisions merely reiterate the straightforward proposition that "Congress may not predetermine the results in any given case." *Crater v. Galaza*, 491 F.3d 1119, 1128 (9th Cir. 2007), *cert. denied*, 128 S. Ct. 2961 (2008); *see also Green v. French*, 143 F.3d 865, 874 (4th Cir. 1998) (Congress may not "mandate[ ] a particular result in any pending case"), *abrogated on other grounds by Williams v. Taylor*, 529 U.S. 362 (2000).[4]

Section 4412(b)(1) of SAFETEA-LU does not "predetermine the results" in any TAPS Quality Bank proceeding. It simply establishes a new substantive legal standard that authorizes FERC to order refunds as far back as February 1, 2000, if FERC

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[4] *Shawnee Tribe v. United States*, 423 F.3d 1204, 1217-18 (10th Cir. 2005) ("Congress cannot dictate findings or command specific results in pending cases."); *Lindh v. Murphy*, 96 F.3d 856, 872 (7th Cir. 1996) (en banc) (Congress cannot "tell courts how to decide a particular case"), *rev'd on other grounds*, 521 U.S. 320 (1997).

determines in a pending TAPS Quality Bank proceeding that such relief is warranted.

Other lower courts agree with the D.C. Circuit that such amendments to applicable law do not violate the separation of powers. *See Biodiversity Assocs. v. Cables*, 357 F.3d 1152, 1171 (10th Cir. 2004) ("Because . . . the 706 Rider did 'amend[ ] applicable law,' the *Klein* principle does not apply here."); *Nichols v. Hopper*, 173 F.3d 820, 823 (11th Cir. 1999) (no separation of powers violation where "Congress has enacted new standards, but has left to the courts the judicial functions of applying those standards"); *Imprisoned Citizens Union v. Ridge*, 169 F.3d 178, 187 (3d Cir. 1999) (same).

Because the D.C. Circuit's rejection of petitioner's constitutional challenge is consistent with the settled law of every other circuit that has addressed the issue, there is no basis for this Court to accept petitioner's invitation to revisit the *Klein* line of cases.[5]

II. THIS CASE IS A POOR VEHICLE FOR REEXAMINING *KLEIN* AND ITS PROGENY.

Petitioner asks this Court to grant review in order to reconsider a more than century-old line of authority spanning from *Klein* to *Miller v. French*, but offers no plausible basis for the Court to reexamine

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[5] Petitioner also contends in passing that Section 4412(b)(1) lacks "a rational basis." Pet. 17. Because petitioner does not include this rational basis challenge in its question presented, the Court need not consider it. In any event, that argument does not warrant this Court's review because, as the D.C. Circuit explained, "Congress could easily have concluded that limiting the retroactivity of refunds would help provide certainty to parties affected by FERC's decision." Pet. App. 4a.

those decisions. Indeed, at least three times in the last two decades—in *Plaut*, *Robertson*, and *Miller*—the Court has reaffirmed that Congress does not violate the separation of powers when it amends existing law governing pending cases. The D.C. Circuit's decision fits squarely within that line of authority.

Even if the Court were inclined to undertake the far-reaching reexamination of its precedent urged by petitioner, this case is a particularly poor vehicle for doing so because petitioner's constitutional challenge is inextricably intertwined with unsettled questions of statutory construction that, in the first instance, require resolution by FERC. Petitioner premises its constitutional challenge to Section 4412(b)(1) on the ground that "the rule of section 4412(b)(2)"—which governs TAPS Quality Bank proceedings commenced after the enactment of SAFETEA-LU—"would allow full refunds to ExxonMobil back to 1993" if applied in this case. Pet. 14. But neither FERC nor the D.C. Circuit has addressed this issue of statutory construction. Indeed, the D.C. Circuit saw no need to do so in this case, and instead rejected petitioner's separation-of-powers argument on the basis of its previous decision in *Save our Mall*.

Properly construed, however, the application of Section 4412(b)(2) in this case would actually have provided petitioner with a *shorter* refund period than Section 4412(b)(1). Section 4412(b)(2) provides that FERC "may not order retroactive changes in TAPS quality bank adjustments for any period that exceeds the 15-month period immediately preceding the earliest date of the first order of the [FERC] imposing quality bank adjustments in the proceeding." 119 Stat. at 1779. In other words, as Williams argued below, the provision imposes a limitation of no more than a total of fifteen months of retroactive adjust-

ments regardless of when the triggering order is issued.

Petitioner contends that FERC's "first order adjusting valuations was issued on November 30, 1993." Pet. 14. In fact, that 1993 decision was prospective only and thus ordered *no* refunds. *See OXY USA v. FERC*, 64 F.3d 679, 699 (D.C. Cir. 1995) ("FERC properly determined that it lacked the authority to apply the new methodology retroactively"); *see also* 65 F.E.R.C. ¶ 61,277 (1993). Indeed, it was not until six years later that the D.C. Circuit required FERC to consider ordering refunds back to 1993. *See Exxon*, 182 F.3d at 50 ("FERC abused its discretion when it failed without adequate explanation to make the revaluation and concomitant Quality Bank adjustments retroactive to 1993"). Accordingly, "the first order of the [FERC] imposing quality bank adjustments" was the ALJ's 2005 decision, which, pursuant to the D.C. Circuit's instructions in *Exxon*, ordered refunds of Quality Bank Resid component adjustments back to 1993. *See* Pet. App. 165a-92a.[6]

Petitioner therefore received a larger refund of TAPS Quality Bank adjustments under Section 4412(b)(1) than it would have if the refund rule established in Section 4412(b)(2) had been applied to the pending proceeding. Under Section 4412(b)(2), petitioner would only have been entitled to a refund for the fifteen-month period preceding FERC's 2005 refund order. Under Section 4412(b)(1), in contrast,

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[6] The ALJ's decision was nonfinal and subject to review by FERC upon request of the parties. FERC itself never ordered refunds arising from the Resid component valuation back to 1993, either before or after the enactment of SAFETEA-LU.

petitioner is entitled to a refund back to February 1, 2000.

The fact that Section 4412(b)(1) provides petitioner with more favorable treatment than it would have received under the refund rule applicable to subsequently filed TAPS Quality Bank proceedings eviscerates petitioner's argument that Congress violated the separation of powers by singling out this pending proceeding for disparate treatment. At a minimum, the inconsistent interpretations of Section 4412(b)(1) advanced by petitioner and respondents—and the apparent absence of a need for FERC or the D.C. Circuit to issue an authoritative construction of that provision in order to reject petitioner's arguments—militate strongly against using this case to undertake the far-reaching reconsideration of settled precedent urged by petitioner.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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