No. 26-404

In the Supreme Court of the United States

AFFIRMED ENERGY, LLC, PETITIONER

v.

FEDERAL ENERGY REGULATORY COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL ENERGY REGULATORY COMMISSION IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

DAVID L. MORENOFF
Deputy General Counsel
ROBERT H. SOLOMON
Solicitor
JARED B. FISH
Senior Attorney
Federal Energy Regulatory Commission
Washington, D.C. 20426

QUESTION PRESENTED

Under the Federal Power Act, 16 U.S.C. 791a *et seq.*, regulated public utilities must file with the Federal Energy Regulatory Commission any proposed amendment to their rates or practices affecting rates. See 16 U.S.C. 824d. Courts have uniformly interpreted the Act to forbid retroactive changes to rates or to practices that affect rates. The question presented is as follows:

Whether a utility's amendment to its governing tariff that applies only to future energy-capacity auctions is impermissibly retroactive.

ADDITIONAL RELATED PROCEEDINGS

United States Court of Appeals (D.C. Cir.):

Affirmed Energy, LLC v. *Federal Energy Regulatory Commission*, No. 25-1091 (Feb. 10, 2026)

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Statement 2
Argument 8
Conclusion 15

TABLE OF AUTHORITIES

Cases:

American Efficient, LLC,
195 F.E.R.C. ¶ 61,043 (2026) 6, 14
Arkansas Louisiana Gas Co. v. *Hall*,
453 U.S. 571 (1981) 2
Chafin v. *Chafin*, 568 U.S. 165 (2013) 14
Chew Heong v. *United States*, 112 U.S. 536 (1884) 11, 12
Connecticut Department of Public Utility Control
v. *FERC*, 569 F.3d 477 (D.C. Cir. 2009),
cert. denied, 558 U.S. 1110 (2010) 3
Hughes v. *Talen Energy Marketing, LLC*,
578 U.S. 150 (2016) 3
Landgraf v. *USI Film Products*,
511 U.S. 244 (1994) 9-12
Louisiana Public Service Commission v. *FERC*,
771 F.3d 903 (5th Cir. 2014), cert. denied,
575 U.S. 996 (2015) 2
Maryland Office of People's Counsel v. *FERC*,
164 F.4th 920 (D.C. Cir. 2026) 2
PJM Power Providers Group v. *FERC*,
96 F.4th 390 (3d Cir. 2024) 2, 7, 13
Public Utilities Commission v. *FERC*,
462 F.3d 1027 (9th Cir. 2006) 2
Republic of Austria v. *Altmann*, 541 U.S. 677 (2004) 10

Cases—Continued: Page

Towns of Concord, Norwood, and Wellesley v. *FERC*, 955 F.2d 67 (D.C. Cir. 1992) 2
United Gas Pipe Line Co. v. *Memphis Light, Gas & Water Division*, 358 U.S. 103 (1958) 4

Statutes and rule:

Federal Power Act, ch. 285, 41 Stat. 1063 (16 U.S.C. 791a *et seq.*) 2
16 U.S.C. 823b(d)(3)(B) 6
16 U.S.C. 824(b)(1) 2
16 U.S.C. 824d(c) 2
Sup. Ct. R. 10(c) 13

In the Supreme Court of the United States

No. 26-404

AFFIRMED ENERGY, LLC, PETITIONER

v.

FEDERAL ENERGY REGULATORY COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL ENERGY REGULATORY COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-51a) is reported at 166 F.4th 1070. The order of the Federal Energy Regulatory Commission (Pet. App. 55a-112a) is available at 189 F.E.R.C. ¶ 61,095 (2024). A subsequent order of the Commission (Pet. App. 115a-158a) is available at 190 F.E.R.C. ¶ 61,081 (2025).

JURISDICTION

The judgment of the court of appeals was entered on February 10, 2026. A petition for rehearing was denied on May 7, 2026 (Pet. App. 159a-160a). On July 24, 2026, the Chief Justice extended the time within which to file a petition for a writ of certiorari until September 18, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 16 U.S.C. 825*l*(b).

STATEMENT

1. The Federal Power Act (Act), ch. 285, 41 Stat. 1063, as amended (16 U.S.C. 791a *et seq.*), vests the Federal Energy Regulatory Commission (FERC or Commission) with exclusive jurisdiction over wholesale sales of electric energy in interstate commerce and over the transmission of electric energy in interstate commerce. 16 U.S.C. 824(b)(1). The Act provides that "every public utility shall file with the Commission * * * all rates and charges for any transmission or sale subject to the jurisdiction of the Commission," as well as any "classifications, practices, and regulations affecting such rates and charges." 16 U.S.C. 824d(c).

Under the "filed rate doctrine," regulated entities may charge only the rates that have been properly filed with the appropriate regulatory body. See *Arkansas Louisiana Gas Co.* v. *Hall*, 453 U.S. 571, 577 (1981). One "corollary" of that doctrine is that utilities and regulators may not "alter[] a rate retroactively." *Towns of Concord, Norwood, and Wellesley* v. *FERC*, 955 F.2d 67, 71 (D.C. Cir. 1992). Accordingly, courts have uniformly interpreted the Act to forbid retroactive changes to rates or to classifications, practices, et cetera that affect rates. *E.g.*, *Maryland Office of People's Counsel* v. *FERC*, 164 F.4th 920, 922-923 (D.C. Cir. 2026); *PJM Power Providers Group* v. *FERC*, 96 F.4th 390, 394 (3d Cir. 2024); *Louisiana Public Service Commission* v. *FERC*, 771 F.3d 903, 911 (5th Cir. 2014), cert. denied, 575 U.S. 996 (2015); *Public Utilities Commission* v. *FERC*, 462 F.3d 1027, 1063 (9th Cir. 2006); cf. *Arkansas Louisiana Gas*, 453 U.S. at 577-578.

This case involves a 2024 tariff amendment filed by intervenor-respondent PJM Interconnection, L.L.C., a regional transmission organization (RTO). An RTO is a

nonprofit entity that manages the electric grid in a particular region. See *Hughes* v. *Talen Energy Marketing, LLC*, 578 U.S. 150, 155 (2016). RTOs have multiple obligations, "which include operating the grid in particular geographic areas, balancing supply and demand, and ensuring a reliable transmission system." Pet. App. 3a (internal quotation marks omitted). PJM is the RTO that "oversees the electricity grid in all or parts of 13 mid-Atlantic and Midwestern States and the District of Columbia." *Hughes*, 578 U.S. at 155.

To ensure adequate electric generation supply to meet projected electricity demand in the future, PJM periodically administers "capacity auctions." Pet. App. 3a; see *Hughes*, 578 U.S. at 155. "'Capacity' is not electricity itself but the ability to produce it when necessary." *Connecticut Department of Public Utility Control* v. *FERC*, 569 F.3d 477, 479 (D.C. Cir. 2009), cert. denied, 558 U.S. 1110 (2010). At a capacity auction, each participating provider bids a price that it will accept in return for its promise to supply a specified amount of electric power in the future. Pet. App. 4a. "PJM accepts bids, beginning with the lowest proposed rate, until it has purchased enough capacity to satisfy projected demand" for the delivery year (which is generally one to three years in the future). *Hughes*, 578 U.S. at 155-156; see Pet. App. 4a. "No matter what rate they listed in their original bids, all accepted capacity sellers receive the highest accepted rate, which is called the 'clearing price.'" *Hughes*, 578 U.S. at 156; see Pet. App. 4a.

The clearing price in any particular capacity auction depends in part on the projected demand that PJM forecasts for the delivery year; a higher projected demand means that more capacity must be purchased, re-

sulting in a higher clearing price. Pet. App. 4a. But PJM historically had difficulty forecasting the projected demand because its statistical models could not accurately capture the effects of transitioning to energy-efficient resources (EERs), such as energy-efficient lightbulbs and appliances. *Ibid.* In part that was because PJM's models had a four-year lag—that is, the energy savings from EER projects would not be reflected in PJM's forecast until four years after they became operational. *Id.* at 2a. Accordingly, during those four years, PJM risked overestimating the required demand for electricity, which in turn would cause PJM to purchase more capacity than was ultimately needed (at a concomitantly higher clearing price). *Id.* at 3a-4a.

To address that problem, PJM (with FERC's authorization) amended its tariff in 2009 to allow EER providers to participate in its capacity auctions. Such providers would not actually generate electricity; instead, an EER provider would offer in the auction a "supply" of electric capacity equal to the anticipated *reduction in demand* for electricity that its EER projects were expected to produce. See Pet. App. 5a. That expedient would compensate for inaccuracies in PJM's statistical models. To avoid double-counting, however, an EER could be offered in the auction only if it "[wa]s not reflected in the peak load forecast" for the delivery year. *Ibid.* (citation omitted). And in part because of the four-year lag, any EER "that clear[ed] an auction for a Delivery Year may be offered in auctions for up to three additional consecutive Delivery Years, but shall not be assured of clearing in any such auction." *Ibid.* (citation omitted). PJM's tariff also "include[d] a *Memphis* clause under which [PJM] reserve[d] the right to revise future rates." *Id.* at 147a (footnote omitted); see *United*

Gas Pipe Line Co. v. *Memphis Light, Gas & Water Division*, 358 U.S. 103 (1958).

By 2016, PJM had improved its models to eliminate the four-year lag and properly account for EER projects in its forecast. Pet. App. 6a; see *id.* at 117a-118a. But "[b]ecause PJM accounted for EERs both in its load forecast and at its auctions, PJM wound up double counting their effects on electrical consumption." *Id.* at 6a. And "by double counting the effects of EERs, PJM risked obtaining less capacity than it needed." *Ibid.* PJM addressed the double-counting with "an 'addback' mechanism" in which it would purchase additional capacity to offset the double-counted reduction, but that had the effect of requiring "end-use customers within PJM's region to shoulder the costs." *Id.* at 6a-7a; see *id.* at 99a (explaining that under the addback, EERs "receive capacity payments despite the fact that they do not reduce or otherwise contribute towards meeting the region's resource adequacy requirement").

In 2024, PJM therefore "proposed to 'prospectively sunset' EERs' auction eligibility, beginning with July 2025's auction for the 2026/27 delivery year." Pet. App. 7a. PJM explained that "capacity payments for EERs had proven increasingly onerous, cresting at $144 million for the 2025/26 delivery year alone," and that its proposed amendment "was backed by a supermajority of its stakeholders and was the product of nearly one year's deliberation." *Ibid.* PJM provided affidavits and data showing that its load forecasts now accurately captured the effect of EERs, thus eliminating the need for EER providers to participate in capacity auctions. *Id.* at 8a-9a.

2. Petitioner has participated in PJM's capacity auctions as an EER provider, though it has not produced

any EERs itself. Pet. App. 9a. Instead, petitioner asserts that it has paid manufacturers, retailers, and distributors of EER products for the right to offer, in capacity auctions, the energy savings that are associated with those products. *Ibid.*

As it turns out, petitioner's EER program was fraudulent—indeed, "one of the largest and most brazen frauds in the history of the Federal Energy Regulatory Commission." *American Efficient, LLC*, 195 F.E.R.C. ¶ 61,043, at 5, ¶ 1 (2026). An investigation revealed that petitioner and its affiliates had "sold PJM an amount of fake capacity equivalent to almost two nuclear reactors every year," and had thereby "stole[n] half a billion dollars from hard-working Americans by collecting compensation for fake 'energy efficiency resources.'" *Id.* at 5, 7, ¶¶ 1, 6; see *id.* at 6-8, 28-60, ¶¶ 4-9, 60-134 (describing the scheme). FERC ordered petitioner and its affiliates to disgorge approximately $410 million in unjust profits and assessed a civil penalty of $722 million. *Id.* at 5, ¶ 1. Petitioner filed for bankruptcy before the Commission could bring suit to enforce those penalties. See Pet. 11 n.5; cf. 16 U.S.C. 823b(d)(3)(B).

During the Commission proceedings to evaluate PJM's proposed 2024 tariff amendment, petitioner challenged the amendment, which would exclude it from offering EERs in future capacity auctions. See Pet. App. 13a. Relevant here, petitioner argued that the amendment was impermissibly retroactive. Although the amendment governs only future capacity auctions, petitioner asserted that PJM had promised EER providers that any cleared EER could be offered in capacity auctions for up to three additional years, and that the amendment retroactively vitiated that promise. See *ibid.*

3. In November 2024, FERC approved PJM's proposed tariff amendment. Pet. App. 55a-112a. The Commission rejected the argument that the tariff was impermissibly retroactive. *Id.* at 107a-110a. The Commission explained that PJM's amendment was "forward-looking" because it applied only "prospectively" to future capacity auctions. *Id.* at 107a-108a. FERC further explained that an amendment is not retroactive simply because it "upset[s] the expectations of market participants." *Id.* at 108a. The Commission noted that if a particular PJM amendment "would disrupt settled expectations," the amendment may be evaluated under a "'balancing of interests,'" and that here "the benefits of PJM's proposal outweigh the possible harm caused by upsetting any settled expectations." *Id.* at 108a, 110a (citation omitted); see *id.* at 109a-110a.

FERC subsequently denied petitioner's petition for rehearing. Pet. App. 115a-158a. Relevant here, the Commission reiterated that the tariff amendment was not impermissibly retroactive because "PJM's proposal applied wholly prospectively, to change provisions governing the eligibility of certain resources to participate in future auctions." *Id.* at 146a; see *id.* at 144a-148a. The Commission thus rejected petitioner's reliance on the Third Circuit's decision in *PJM Power Providers*, *supra*, which held that a proposed tariff amendment was "impermissibly retroactive" only as to an "ongoing auction process, but not as to future auctions." Pet. App. 145a (footnote omitted). FERC also observed that the provision of the previous tariff stating that EERs clearing an auction may be offered in three additional auctions was actually a "*limitation* on [EERs'] eligibility to participate in capacity auctions to reflect the four-year" lag, not an "affirmative legal right" to "participate

in three subsequent auctions." *Id.* at 146a-147a (emphasis added).

4. The court of appeals denied petitioner's petition for review. Pet. App. 1a-51a.

a. Relevant here, the court of appeals agreed with the Commission that PJM's tariff amendment was not impermissibly retroactive as applied to petitioner. Pet. App. 13a-20a. The court explained that a rule is impermissibly retroactive if it "render[s] past actions illegal or otherwise sanctionable," but not if it simply "impair[s] the future value of past bargains" or "upsets expectations based on prior law." *Id.* at 17a-18a (citations omitted); see *ibid.* (explaining that "an order 'is not retroactive' if it 'alters the future effect' but 'not the past legal consequences of an action'") (citation omitted). The court concluded that PJM's 2024 tariff amendment, and FERC's approval of it, "undoubtedly altered [petitioner's] eligibility for *future* auctions," but "did not strip [petitioner] of its 'past eligibility,'" "force [petitioner] to return the 'payments it had received' from earlier auctions," or "render [petitioner's] 'past actions illegal or otherwise sanctionable.'" *Id.* at 18a-19a (emphasis added; brackets and citations omitted).

b. Judge Pan dissented from the retroactivity ruling. Pet. App. 33a-51a. She would have held that "the 2024 tariff amendment 'takes away or impairs' [petitioner's] 'vested right' to bid in subsequent auctions." *Id.* at 42a (citation omitted); see *id.* at 42a-51a.

ARGUMENT

Petitioner contends (Pet. 15-25) that the 2024 tariff amendment was impermissibly retroactive. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. This case also would be an

unsuitable vehicle in which to address the question presented because petitioner has declared bankruptcy and its business model has been found to be fraudulent, rendering resolution of that question academic as to petitioner. Further review is not warranted.

1. The court of appeals correctly rejected petitioner's retroactivity challenge to PJM's 2024 tariff amendment. Pet. App. 18a-19a. The court explained that an agency action "'is not retroactive' if it 'alters the future effect' but 'not the past legal consequences of an action.'" *Id.* at 17a-18a & n.3 (citation omitted). Statutes meeting that description are not retroactive even if they "unsettle expectations and impose burdens on past conduct." *Landgraf* v. *USI Film Products*, 511 U.S. 244, 269 n.4 (1994). Instead, a retroactive rule is one that "attaches new legal consequences to events completed before its enactment." *Id.* at 270.

Under those principles, PJM's 2024 tariff amendment was not retroactive. The amendment operated solely on a "forward-looking" basis because it precluded EERs from being offered in *future* capacity auctions. Pet. App. 18a. The amendment thus did not purport to "attach[] new legal consequences," *Landgraf*, 511 U.S. at 270, to an EER's clearance in a previous auction. The amendment does not "unclear" the EER, claw back payments made to the EER provider, or make the previous clearance unlawful. Pet. App. 18a-19a. Instead, it simply provides that EERs—whether previously cleared or not—may not be offered in future capacity auctions.

Petitioner principally contends (Pet. 21, 24-25) that the three-additional-years provision gave it a "vested right" to offer previously cleared EERs in up to three future auctions, and that the 2024 amendment impermissibly revoked that right. That contention lacks

merit. As an initial matter, that provision of the 2009 tariff was a *limitation* on petitioner's ability to offer EERs, not a legal entitlement or right. See Pet. App. 146a-147a. An EER saves energy relative to a less-efficient alternative in every year in which it is operational. Absent the three-additional-years provision, an EER provider potentially could have offered an EER in successive auctions over the entire operational life of the resource. The provision truncated such offerings after four years because at that point PJM's models would finally begin to reflect the resource's energy savings. See *id.* at 5a. PJM's 2024 tariff amendment excluding EERs from future capacity auctions therefore did not deprive petitioner of any vested right that it previously possessed.

Petitioner's reliance on vested rights is particularly misplaced because this Court has expressly rejected the relevance of vested rights to retroactivity. In *Republic of Austria* v. *Altmann*, 541 U.S. 677 (2004), the Court adopted the "approach to retroactivity" that was "advocated by Justice Scalia in his concurrence in *Landgraf*." *Id.* at 697 n.17 (capitalization altered). There, Justice Scalia stated that the "critical issue" for retroactivity "is *not* whether the rule affects 'vested rights,' * * * but rather what is the relevant activity that the rule regulates." *Landgraf*, 511 U.S. at 291 (emphasis added). Here, the 2024 tariff amendment regulates only activity related to future capacity auctions; it does not purport to govern capacity auctions that have already occurred. It is thus not retroactive.

At all events, even if the concept of "vested rights" were relevant, and even if the three-additional-years provision were viewed as giving petitioner a legal entitlement, this case would at most involve a *contingent*

right, not a vested one. Under the 2009 tariff, a previously cleared EER offered in a future capacity auction "shall not be assured of clearing in any such auction." Pet. App. 5a (citation omitted). And the 2009 tariff separately provided that an EER would be ineligible for offering if it was already "reflected in the peak load forecast" for the delivery year. *Ibid.* (citation omitted). Nothing in the three-additional-years provision purported to waive that requirement. EERs eventually *were* reflected in PJM's load forecasts after the 2016 update. Thus, after 2016, no provider could have had a vested right in (or even a reasonable expectation of) being able to offer an *ineligible* resource in a capacity auction, much less a right or expectation that the resource would clear such an auction.

2. The decision below does not conflict with any decision of this Court or another court of appeals. Petitioner's reliance (Pet. 20-25) on this Court's decisions in *Landgraf*, *supra*, and *Chew Heong* v. *United States*, 112 U.S. 536 (1884), is misplaced. The Court in *Landgraf* rejected a plaintiff's argument that a statute enacted while her appeal was pending should apply to her claim. 511 U.S. at 282-283. It was uncontested that applying the statute to the plaintiff's claim would be retroactive; the parties disputed whether the statutory language was clear enough to overcome the presumption against retroactivity, and the Court held that it was not. *Ibid.* The Court stated that a statute would have "retroactive effect" if it "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Id.* at 280.

PJM's 2024 tariff amendment does not have any of those effects. It obviously does not increase any liabil-

ity or impose any duties based on petitioner's participation in prior capacity auctions. Nor does the amendment impair any rights that petitioner possessed "when [it] acted," *Landgraf*, 511 U.S. at 280, because the amendment does not purport to render unlawful any of petitioner's previously lawful past actions. And to the extent petitioner argues that the amendment impaired its supposed right to offer a given EER in future capacity auctions, petitioner would have acquired that (contingent) right only *after* it acted—*i.e.*, after the EER cleared an auction (itself a contingent event)—and not "when" it acted.

The *Chew Heong* Court held that a particular immigration statute, which required that any alien laborer who planned to leave the country must first obtain a specified certificate in order to re-enter, did not apply to a laborer who had left before the statute was enacted (and thus could never have obtained such a certificate). 112 U.S. at 559-560. As in *Landgraf*, it was uncontested that applying the statute to the laborer would be retroactive because when the laborer had left the country, then-governing law gave him a right to re-enter. *Ibid.* The Court held that the new statute did not contain "language so clear and positive as to leave no room to doubt" that Congress had intended it to apply retroactively. *Id.* at 559. The Court described a statute as having "retroactive operation" where "rights previously vested are injuriously affected." *Ibid.*

As explained, any right petitioner had to offer EERs in future auctions was necessarily contingent, not vested, and thus does not fit within *Chew Heong*'s description of retroactivity any more than it does *Landgraf*'s. And more generally, the Court in both *Landgraf* and *Chew Heong* addressed the question whether par-

ticular statutory language was best read to permit an unquestionably retroactive application. In this case, by contrast, all agree that retroactive tariff amendments are impermissible; the only disputed question is whether the uncontested scope of the 2024 tariff amendment is in fact retroactive. That difference underscores that the decision below does not conflict with *Landgraf* or *Chew Heong*. Cf. Sup. Ct. R. 10(c).

Petitioner is also wrong in contending (Pet. 16-20) that the decision below conflicts with the Third Circuit's decision in *PJM Power Providers Group* v. *FERC*, 96 F.4th 390 (2024). There, PJM sought to apply a tariff amendment to an auction that was already in progress. *Id.* at 396. The Third Circuit held that applying an amended tariff to an auction that had already begun under the original tariff was impermissibly retroactive under the filed-rate doctrine. *Id.* at 399-401.

Here, in contrast, PJM did not seek to apply the 2024 tariff amendment to any auction then in progress. Instead, the challenged amendment expressly applies only to future capacity auctions. Pet. App. 18a. Nothing in *PJM Power Providers* suggests that the Third Circuit would have reached a different result than the court below did on the facts of this case. Indeed, the Third Circuit in that case declined to preclude, on retroactivity grounds, the application of the tariff amendment to a "capacity auction in the future." 96 F.4th at 402.

3. At all events, this case would be a poor vehicle in which to address the question presented because resolution of that question would make no practical difference to petitioner. Any capacity auction at which petitioner could have offered EERs has "come and gone." Pet. 30. And petitioner has recently filed for bankruptcy, no doubt in large part because of the $1.1 billion

in disgorgement and civil penalties imposed for its fraudulent behavior. See p. 6, *supra*. It therefore is speculative whether a grant of certiorari and a reversal of the court of appeals' retroactivity holding would provide petitioner any practical benefit.

Petitioner emphasizes the possibility that it might ultimately receive "retrospective monetary relief"—specifically, a compensatory payment from PJM to petitioner for "what [petitioner] would have been owed had it participated in a completed auction"—if the Court grants certiorari and petitioner prevails on the merits. Pet. 30-31. But petitioner's entire business model was found to be fraudulent, see *American Efficient, LLC*, 195 F.E.R.C. ¶ 61,043, at 5-8, 28-60, ¶¶ 1-9, 60-134 (2026), and petitioner does not contend that a provider would be entitled to payments for offering fraudulent EERs in a capacity auction. So even if the theoretical availability of monetary relief is enough to save the case from mootness as a constitutional matter, cf. *Chafin* v. *Chafin*, 568 U.S. 165, 175-176 (2013), the unlikely prospect of its ever materializing—or of the retroactivity issue's ever being relevant to petitioner in the future—makes this case a poor candidate for the Court's discretionary review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

DAVID L. MORENOFF
Deputy General Counsel
ROBERT H. SOLOMON
Solicitor
JARED B. FISH
Senior Attorney
Federal Energy Regulatory Commission

NOVEMBER 2026