

January 4, 2023

Administrator Michael Regan
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

CC: John Podesta
Senior Advisor to the President for Clean Energy Innovation and Implementation

CC: Ali Zaidi
Assistant to the President & National Climate Advisor

CC: Brenda Mallory
Chair, White House Council on Environmental Quality

Dear Administrator Regan,

We, the undersigned, urge you to refer the issue of the Tennessee Valley Authority (TVA)'s plan to replace its Cumberland (and Kingston) coal plants with a new gas plant and gas pipeline to the White House Council on Environmental Quality (CEQ). This authority is given to the Environmental Protection Agency (EPA) by the Clean Air Act and is clearly outlined in Section 309 of the Act.

This is a matter in which the Biden Administration has power — and no required 50th Senate vote as a roadblock — to make good on its promises to tackle the global climate emergency. It is an issue of legacy where the EPA can either use its legal power to advance the clean energy economy, or, given the alternative of no action, can needlessly sign off on dangerous fossil fuel expansion.

Section 309 of the Clean Air Act states the following: “In the event the [EPA] Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.”¹

A 2012 guide published by the U.S. Department of the Interior (Interior) interprets the law as such: “EPA is **required** to refer to CEQ any action the Administrator of the EPA believes to be unsatisfactory from the standpoint of public health, welfare, or environmental quality.” (Emphasis added).²

The EPA has fulfilled³ the first part of its mandate given in Section 309: that “The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any [...] major Federal agency action [...] Such written comment shall be made public at the conclusion of any such review.”

The TVA's Draft Environmental Impact Statement (DEIS) proposed one action (Action A) and outlined a no-action alternative and two additional alternatives, as follows:⁴

¹ US Government Publishing Office, Clean Air Act, Section 309.
<https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapIII-sec7609.htm>

² Indian Affairs National Environmental Policy Act (NEPA) Guidebook, Section 11.4, page 46.
https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/59_IAM_3-H_v1.1_508_OIMT.pdf

³ US Environmental Protection Agency, “Re: EPA Comments on the Draft Environmental Impact Statement for the Cumberland Fossil Plant Retirement, Stewart County, Tennessee; CEQ No: 20220059”, June 30, 2022.
<https://cleanenergy.org/wp-content/uploads/2022-06-30-EPA-comments-on-Cumberland-CUF-DEIS.pdf>

⁴ Ibid

- Alternative A: Retirement and demolition of CUF and construction and operation of a 1,450 MW capacity combined cycle combustion turbine (CC) natural gas plant at the same site, including a 32-mile natural gas pipeline extending through Stewart, Houston, and Dickson Counties, TN.
- Alternative B: Retirement and demolition of CUF and construction and operation of natural gas simple cycle combustion turbines (CT) at two alternate locations.
- Alternative C: Retirement and demolition of CUF and construction and operation of solar generation and energy storage facilities, at alternate locations primarily in middle Tennessee.

The EPA, in its comments, found a series of issues with the TVA's DEIS, including the following:⁵

- "The analysis of the preferred alternative did not consider important, available mitigation options to reduce impacts from GHG emissions."
- "The DEIS does not fully disclose modeling and underlying assumptions for the alternatives considered, nor those alternatives that were considered and eliminated from further discussion."
- **"The DEIS does not fully quantify or adequately disclose the impacts of the GHG emissions from the proposed action and alternatives."**

The EPA concluded its comment summary by stating in no uncertain words: **"Alternative A, the preferred alternative, would result in significant GHG emissions and associated environmental impacts.** The EPA believes there are mitigation options and reasonable alternatives that were not analyzed in detail in the DEIS that would reduce GHG emissions. In addition, impacts were not sufficiently disclosed. As discussed in our detailed comments, the EPA strongly recommends the proposed action be modified or a different preferred alternative be selected in the Final EIS, and that the DEIS informational deficiencies be clearly remedied for the public and TVA decisionmakers."

Considering that these issues were *not* remedied in the final EIS,⁶ it follows that there should remain concerns from the EPA about the satisfaction of the EIS in protecting public health, welfare, and environmental quality.

There are hardly words to express the seriousness of this issue and the devastating effects a new gas plant and pipeline would have on our country and the planet at large. The science is not up for debate: there can be no new investments in gas⁷ if the world is to keep planetary warming below 1.5°C. Gas is not a safe or clean transition or "bridge" fuel.⁸ The health impacts of gas drilling, production, and burning are deadly.⁹ And there are safer alternatives, including the solar generation and storage option laid out by the TVA itself.

⁵ Ibid

⁶ Southern Alliance for Clean Energy, Maggie Shober, December 12, 2022, "TVA Nears Decision to Build New Gas Plant and Pipeline in Middle Tennessee."

<https://cleanenergy.org/blog/tva-nears-decision-to-build-new-gas-plant-and-pipeline-in-middle-tennessee/>

⁷ *The Guardian*, Fiona Harvey, May 18, 2021, "No new oil, gas or coal development if world is to reach net zero by 2050, says world energy body."

<https://www.theguardian.com/environment/2021/may/18/no-new-investment-in-fossil-fuels-demands-top-energy-economist>

⁸ *New England Journal of Medicine*, Philip J. Landrigan, M.D., Howard Frumkin, M.D., Dr.P.H., and Brita E. Lundberg, M.D., January 9, 2020, "The False Promise of Natural Gas."

<https://www.nejm.org/doi/pdf/10.1056/NEJMp1913663?articleTools=true>

⁹ Concerned Health Professionals of NY, April 28, 2022, "Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking and Associated Gas and Oil Infrastructure, Eighth Edition."

<https://concernedhealthny.org/compendium/>

This is an extremely urgent issue: TVA CEO Jeff Lyash can make a final decision on the issue as soon as January 9, 2023, which is 30 days following the date that the final EIS was published in the Federal Register.¹⁰

It is imperative that the EPA recognize its duty to refer this action to the CEQ, which can subsequently submit the matter to the President, if needed.¹¹ President Biden has stated that his administration's goal is to create a carbon pollution-free power sector by 2035 and achieve a 50-52 percent reduction from 2005 levels in economy-wide net greenhouse gas pollution by 2030.¹² A new gas plant is not compatible with these goals, and we urge the EPA to fulfill its requirement under the Clean Air Act and do *everything* in its power to ensure it is not built.

Sincerely,

198 methods
350 Bay Area Action
350 Hawaii
350 Humboldt
350 Kishwaukee
350 Pittsburgh
350 Seattle
350 Silicon Valley
350 Triangle
350 Ventura County Climate Hub
ABC Earth Care Team
Accelerate Neighborhood Climate Action
AFGE Local 704
Alabama Interfaith Power & Light
Alliance of Nurses for Healthy Environments
Animals Are Sentient Beings Inc
Appalachian Voices
Bergen County Green Party
Beyond Extreme Energy
Between the Waters
Blue Ridge Environmental Defense League
Center for Biological Diversity
Chapel Hill Organization for Clean Energy
Chapman Forest Foundation
Church Women United in New York State
Climate Crisis Policy
Climate Nashville
Climate Reality Massachusetts Southcoast
CODEPINK for Peace, San Francisco Bay Area
colorbrightongreen.org
Concerned Health Professionals of Pennsylvania

¹⁰ Federal Register, Environmental Impact Statements; Notice of Availability, December 9, 2022.

<https://www.federalregister.gov/documents/2022/12/09/2022-26806/environmental-impact-statements-notice-of-availability>

¹¹ Indian Affairs National Environmental Policy Act (NEPA) Guidebook, Section 11.4, page 46.

https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/59_IAM_3-H_v1.1_508_OIMT.pdf

¹² White House Briefing Room, April 22, 2021, "FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies."

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>

Concerned Health Professionals of New York
Conejo Climate Coalition
CT Climate Crisis Mobilization
Deignan Institute for Earth and Spirit at Iona University
Democratic Socialists of America - Knoxville, TN
Don't Gas the Meadowlands Coalition
Don't Waste Arizona
Earth Action, Inc
Elders Climate Action
Endangered Species Coalition
Energizing Renewable Growth in Holston Valley
Energy Alabama
Environmental Justice Ministry Cedar Lane Unitarian Universalist Church
Extinction Rebellion Phoenix
Extinction Rebellion San Francisco Bay Area
Feminists in Action Los Angeles
FreshWater Accountability Project
Fridays for Future U.S.
Friends of the Earth
GBC Sustainability Team
Hudson River Sloop Clearwater
Indian Point Safe Energy Coalition
Institute for Policy Studies Climate Policy Program
Kentucky Interfaith Power and Light
Larimer Alliance for Health, Safety and Environment
Locust Point Community Garden
Mattawoman Watershed Society
Mebanesville
Methane Action
Nassau Hiking & Outdoor Club
Natural Capitalism Solutions
NC-APPPL (Alliance to Protect Our People and the Places We Live)
NC Climate Solutions Coalition
NC WARN
New Mexico Climate Justice
No-Coal UNC
North American Climate, Conservation and Environment
Novasutras
Ocean Conservation Research
Occupy Bergen County (New Jersey)
Oil & Gas Action Network
Our Revolution Ocean County
Peace and Freedom Party
Peace, Justice, SustainabilityNOW!
Physicians for Social Responsibility, AZ Chapter
Physicians for Social Responsibility Pennsylvania
Protect All Children's Environment
PSR Arizona
Putnam Progressives
Resist the Pipeline
Resource Renewal Institute
Revolving Door Project
Rise Up WV
Safe Energy Rights Group
Safe Housing for Chapel Hill
Santa Barbara Standing Rock Coalition

Save EPA
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Scientist Rebellion, Turtle Island
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South Seattle Climate Action Network
Sowing Justice
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Thomas Berry Forum for Ecological Dialogue at Iona University
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