

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.”<sup>1</sup>

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).<sup>2</sup>

The EPA has fulfilled<sup>3</sup> 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:<sup>4</sup>

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<sup>1</sup> 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>

<sup>2</sup> 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](https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/59_IAM_3-H_v1.1_508_OIMT.pdf)

<sup>3</sup> 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>

<sup>4</sup> 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:<sup>5</sup>

- “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,<sup>6</sup> 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 gas<sup>7</sup> if the world is to keep planetary warming below 1.5°C. Gas is not a safe or clean transition or “bridge” fuel.<sup>8</sup> The health impacts of gas drilling, production, and burning are deadly.<sup>9</sup> And there are safer alternatives, including the solar generation and storage option laid out by the TVA itself.

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<sup>5</sup> Ibid

<sup>6</sup> 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/>

<sup>7</sup> *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>

<sup>8</sup> *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>

<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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

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<sup>10</sup> 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>

<sup>11</sup> 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](https://www.bia.gov/sites/default/files/dup/assets/public/raca/handbook/pdf/59_IAM_3-H_v1.1_508_OIMT.pdf)

<sup>12</sup> 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  
Save the Pine Bush  
Scientist Rebellion, Turtle Island  
Sierra Club  
Sisters of St. Dominic of Blauvelt, New York  
Solar Wind Works  
South Asian Fund For Education Scholarship and Training Inc  
South Seattle Climate Action Network  
Sowing Justice  
Stand.earth  
Stop NY Fracked Gas Pipeline  
Sunflower Alliance  
Tennessee Alliance for Progress  
Terra Advocati  
The People's Justice Council  
Thomas Berry Forum for Ecological Dialogue at Iona University  
True North Research  
Turtle Island Restoration Network  
Unitarian Universalists for a Just Economic Community  
Unite North Metro Denver  
Vote Climate  
Virginia Interfaith Power & Light  
Waterspirit  
Waterway Advocates

Shel Anderson, Durham Democratic Women  
L A Armistead  
Caroline Beyer  
Diana Bohn  
Marie Curtis  
Bridget Farrell  
Sally Jane Gellert  
Judie Gitelson  
Jennifer Grover  
Kenneth Jobe, Citizens Climate Lobby volunteer  
Bridget Kelly-Dearing  
Sophie Loeb  
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