

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TENNESSEE ENVIRONMENTAL)
COUNCIL, TENNESSEE SCENIC RIVERS)
ASSOCIATION, SIERRA CLUB, and)
CENTER FOR BIOLOGICAL DIVERSITY,)
)
Plaintiffs,)
)
v.)
)
TENNESSEE VALLEY AUTHORITY,)
)
Defendant.)
_____)

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Case No. 2013-_____

NATURE OF THE CASE

1. This action challenges the Tennessee Valley Authority’s (“TVA’s”) failure to undertake required environmental analysis under the National Environmental Policy Act (“NEPA”) in connection with its decision to invest 1.2 billion dollars to extend the life of the Gallatin Fossil Plant (the “Life Extension Project”). TVA is now at a crossroads, as it faces environmental compliance obligations that require the agency to install pollution controls or retire the aging Gallatin Plant. While TVA is aware of the extraordinarily high costs that the Gallatin Plant exacts on the environment, it has elected to overhaul the Gallatin Plant and keep it running for the foreseeable future without undertaking the necessary environmental analysis of alternatives to retire the plant.

2. As TVA acknowledges, the Life Extension Project will dramatically increase the amount of coal ash waste and sludge generated by the Gallatin plant. To accommodate this waste, TVA will construct two twelve-story landfills spanning over 170 acres within what was,

until now, a forested wildlife management area. The project will perpetuate the discharge of toxic heavy metals and other harmful pollution into Old Hickory Lake, a popular recreation area and reservoir supplying drinking water for thousands of people living in and near Nashville. Finally, the Life Extension Project will enable the Gallatin Plant to continue emitting, for

decades to come, hundreds to thousands of tons of harmful air pollutants such as soot- and smog- forming sulfur dioxide and nitrogen oxides; millions of tons of carbon dioxide, contributing to atmospheric carbon levels that are driving climate disruption; and hundreds of tons of hazardous air pollutants, including toxic mercury.

3. Notwithstanding these and other significant environmental impacts, TVA declined to prepare a detailed environmental impact statement (“EIS”) to inform its decision to retrofit the Gallatin Plant.

4. In fact, TVA failed to complete even its cursory environmental assessment (“EA”) before it began moving forward with the Life Extension Project. Before completing the NEPA process, TVA entered into construction contracts and forced the relocation and attendant disruption of the Cumberland River Aquatic Center (“Aquatic Center”), a facility devoted to propagating and restoring endangered species.

5. In its rush to undertake the Life Extension Project, TVA ignored NEPA’s essential mandate to consider and disclose environmental consequences *before* embarking on a massive infrastructure project that threatens significant impacts, and equally important, its central requirement to analyze reasonable alternatives that would avoid or minimize environmental harms. Fundamentally, TVA short-circuited the NEPA process by ignoring the most obvious and cost-effective alternative to protect the environment — retirement of the Gallatin Plant. While TVA claims that it has undertaken internal analyses that support its decision to retrofit, these

analyses have never been disclosed to the public and cannot substitute for the transparent decision-making that NEPA requires.

6. In light of these NEPA violations, Plaintiffs Tennessee Environmental Council, Tennessee Scenic Rivers Association, Sierra Club, and Center for Biological Diversity respectfully request that this Court invalidate TVA's decision to approve the Life Extension Project and its supporting Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") and enjoin TVA from taking any further action to implement the Life Extension Project pending compliance with NEPA and its implementing regulations.

JURISDICTION AND VENUE

7. This action involves a federal corporation of the United States, TVA, as a defendant and arises under NEPA, 42 U.S.C. §§ 4321–4370h. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 (federal question), and may issue a declaratory judgment and grant further relief pursuant to 28 U.S.C. §§ 2201, 2202. Plaintiffs have a right to bring this action pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-06, ("APA"). An actual, justiciable controversy exists between Plaintiffs and Defendants, and the requested relief is proper under 28 U.S.C. §§ 2201(a) and 5 U.S.C. §§ 705, 706.

8. Venue is proper in the Middle District of Tennessee pursuant to 28 U.S.C. § 1391(b)(2) and (e). Defendant TVA maintains offices in this district and owns and operates the Gallatin Fossil Plant, which is located in this district and is where a substantial part of the events or omissions giving rise to the claim occurred and where the adverse effects of the challenged decision will be most directly felt.

PARTIES AND STANDING

Plaintiffs

Tennessee Environmental Council

9. Plaintiff Tennessee Environmental Council, Inc. (the “Council”), is a nonprofit corporation organized under the laws of Tennessee with its principal office in Nashville, Tennessee and has approximately 2,500 members throughout the state. The Council was organized in or about 1970 to, amongst other ends, provide an effective and continuing coordinating structure in working for the conservation, preservation, and/or wise use and appreciation of Tennessee’s natural resources, as related to the total environment.

10. The Council has members who live, work, and/or recreate near or downstream of the Gallatin Plant. Many of the Council’s members paddle and/or kayak on the Cumberland River, fish in the Cumberland River, and/or swim and otherwise recreate and enjoy the waters of the Cumberland River and its surrounding banks and wetlands. Members of the Council have been and will continue to be, directly and substantially injured in their use and enjoyment of their property and/or in their recreational and aesthetic enjoyment of the Cumberland River as a direct result of the water pollution caused by ash ponds along the river as well as new landfills of coal ash that will be created in areas near the river as part of the Life Extension Project at the Gallatin Plant. The relief sought in this case would provide redress for these injuries.

Tennessee Scenic Rivers Association

11. The Tennessee Scenic Rivers Association (“TSRA”) is a volunteer organization dedicated to the preservation, protection and restoration of the scenic, free-flowing rivers of our state. Based in Nashville, Tennessee, the organization has approximately 1,000 members across the state and the south.

12. Formed in 1966, TSRA works protect rivers, provide training and instruction in paddling, canoeing, and kayaking, and to offer opportunities to use and enjoy Tennessee's rivers.

13. TSRA campaigned hard for state and national scenic rivers legislation. Tennessee's Scenic Rivers Act of 1969 was the first such comprehensive act in the nation. National scenic rivers legislation followed a year later, and rivers like the Obed and the Big South Fork received national scenic status.

14. TSRA has provided instruction since 1970, when the club offered its first school, one of the first such training events in the United States. TSRA's members' desire to nurture paddling skills eventually grew into the instruction program TSRA offers today.

15. TSRA also organizes and sponsors paddling trips on flat and whitewater rivers throughout Tennessee, including the Cumberland River, Old Hickory Reservoir, the Collins and Buffalo Rivers, and Spring Creek, to name a few.

16. TSRA remains active in conservation issues, joining with other groups to combat threats to rivers like Dry Fork near Spencer and threats to entire watershed areas posed by practices like mountain top removal coal mining. TSRA members "adopt" streams to monitor health, and conduct cleanups on rivers and streams. TSRA members enjoy club-sponsored trips year-round and offer instruction in sea kayak, whitewater canoe, C-1 and kayak, as well as self-rescue, swiftwater rescue, CPR, trip leader seminar and Wilderness First Aid.

17. TSRA members use, paddle, fish in, and enjoy the Cumberland River in the vicinity of and downstream of the Gallatin Plant. The operation of, pollution from, and water use by the Gallatin Plant impairs these members' use and enjoyment of the Cumberland River and other waters in the vicinity of the Gallatin Plant. Continued operation of the Gallatin Plant will harm the interests of TSRA's members who live, work, and recreate in the vicinity of the Gallatin Plant and who use and enjoy the Cumberland River and other waters in the vicinity of the plant.

Sierra Club

18. Sierra Club is a non-profit organization incorporated in the State of California with approximately 600,000 members nationwide. Since its founding in 1892, Sierra Club has pursued its mission to enjoy, explore, and protect the planet. Sierra Club's Tennessee Chapter, which is headquartered in Nashville, has approximately 6,500 members throughout the state, including members who are directly affected by the Gallatin Plant's pollution, and who will continue to be so affected if the Life Extension Project is constructed, and whose electricity bills will rise as a result of the proposed project.

19. Sierra Club has a longstanding interest in securing environmental reforms at TVA that will promote a clean and healthy environment in Tennessee. In addition to its work to clean up TVA's most polluting coal-fired power plants, Sierra Club is actively working to promote reliance on energy efficiency and renewable energy in the region. Dozens of Sierra Club volunteers support organizing efforts throughout the TVA territory to press the agency and its distributors to improve energy efficiency and undertake more careful system planning. As part of this work, Sierra Club commissioned a study in fall 2012 which demonstrated that energy efficiency and other lower emissions alternatives could cost-effectively replace the power from the Gallatin plant at a fraction of the expense of the Life Extension Project. Sierra Club staff and volunteers conducted rallies and an unofficial "People's Public Hearing" to urge TVA to explore these cleaner options.

20. Sierra Club's members and volunteers will be harmed by water and air pollution that will continue for the foreseeable future as a result of the Life Extension Project. For Sierra Club members who live, work, and recreate in and around the Cumberland River, Old Hickory Lake and the Gallatin Plant site, continued operation of the Gallatin plant injures their interests in

drinking clean water and breathing clean air. For Sierra Club members who live, fish, paddle, swim, and otherwise explore and enjoy the region, air and water pollution from continued operation of the Gallatin plant and conversion of a wildlife protection area into a 174-acre coal ash dump will cause enduring injury to their aesthetic and recreational interests.

Center for Biological Diversity

21. Center for Biological Diversity (“Center”) is a non-profit corporation incorporated in California and headquartered in Tucson, Arizona, with field offices throughout the United States. The Center works through science, law, and creative media to secure a future for all species, great or small, hovering on the brink of extinction. The Center has more than 40,000 members, including many in the vicinity of the project area. The Center has members and staff with aesthetic, conservation, economic, moral, professional, recreational, and spiritual interests in the continued existence of the biological diversity of the area, including freshwater mussels and other aquatic species.

22. Members include people who land on the banks of and who regularly use the Cumberland River for boating, canoeing, scuba-diving, water skiing, wildlife viewing, and other purposes near and downstream from the Gallatin Fossil Plant, for aesthetic, conservation, economic, moral, professional, recreational, and spiritual purposes, including for the purpose of viewing aquatic species in this watershed. Members include those that have used the Cumberland River downstream of Gallatin for more than 50 years. Members have a specific interest in a diversity of native wildlife, including endangered species, and in the water quality of the Cumberland River that would support such diversity. Center members have also visited the Cumberland River Aquatic Center mussel propagation facility and the Gallatin Wildlife Management Areas for the purposes of enjoying native wildlife and the work being done to

restore rare and endangered species. The Center has specifically been working to protect aquatic species found in the Cumberland River since at least 2004.

23. TVA intends to pursue the Life Extension Project, which will lead to continued, and in some cases increased, pollution and degradation of the Cumberland River, the greater watershed, and the Gallatin Fossil Plant Wildlife Management Areas. The Project has also led to the dismantling, and is resulting in the continued closure and disruption, of the Cumberland River Aquatic Center mussel propagation facility. For these reasons, and given the interests described above, Center staff members will be harmed by the Project.

Defendant

Tennessee Valley Authority

24. Defendant TENNESSEE VALLEY AUTHORITY (“TVA”) is a corporate agency and instrumentality of the United States, created and existing pursuant to the Tennessee Valley Authority Act, 16 U.S.C. §§ 831–831ee. TVA’s headquarters are located at 400 W. Summit Hill Dr., Knoxville, Tennessee 37902-1499. TVA owns and operates the Gallatin Fossil Plant. The Gallatin Fossil Plant is located at 1499 Steam Plant Road, Gallatin, Tennessee 37066. TVA is the federal agency that took the final agency action challenged here. TVA is amenable to suit under the Administrative Procedure Act and must comply with NEPA.

LEGAL BACKGROUND

The National Environmental Policy Act

25. NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). One of the core goals of NEPA is to “promote efforts which will prevent or eliminate damage to the environment.” 42 U.S.C. § 4321.

26. The Council on Environmental Quality (“CEQ”) has promulgated regulations implementing NEPA. *See* 40 C.F.R. §§ 1500–1508. These regulations are designed to “insure

that environmental information is available to public officials and citizens before decisions are made and actions are taken”; and to “help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” *Id.* § 1500.1(b)–(c). TVA’s own NEPA procedures, which incorporate and supplement the CEQ regulations, are set forth in Tennessee Valley Authority Instruction IX Environmental Review, Procedures for Compliance with the National Environmental Policy Act § 5.4.1 (April 28, 1983) (hereinafter “TVA NEPA Procedures”).

27. NEPA requires Federal agencies to prepare a “detailed statement” regarding all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.3 (same). This statement is known as an environmental impact statement (“EIS”).

28. NEPA regulations define significance in terms of an action’s context and intensity. *See* 40 C.F.R. § 1508.27. An action’s context must be analyzed nationally, regionally, and locally. *See id.* § 1508.27(a). An action’s intensity must be analyzed on the basis of at least 10 factors, any one of which can indicate that an EIS is required. *See id.* § 1508.27(b). An EIS may be required, for instance, if a project “affects public health,” is “likely to be highly controversial,” “establish[es] a precedent for future actions with significant effects,” or “may adversely affect an endangered or threatened species.” *See id.*

29. An agency’s belief that a project will yield positive net environmental effects does not dictate whether an EIS is required. NEPA regulations provide that “[a] significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.” *Id.*

30. TVA's NEPA procedures add that an EIS is "normally required" for projects relating to "[m]ajor power generating facilities" and "[a]ny major action, the environmental impact of which is expected to be highly controversial." *See* TVA NEPA Procedures § 5.4.1.

31. An agency that is uncertain whether an EIS is required may first develop an Environmental Assessment ("EA"). An EA is a concise public document that "provide[s] sufficient evidence and analysis" for determining whether to prepare an EIS or issue a finding of no significant impact ("FONSI"). 40 C.F.R. §§ 1508.9(a); *see also id.* § 1508.13 (describing the requirements for a FONSI). "In most cases . . . a lengthy EA indicates that an EIS is needed." CEQ, Forty Most Asked Questions Concerning the Council on Environmental Quality's NEPA Regulations, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981). The EA must discuss the need for the proposed project, as well as environmental impacts and alternatives. *See* 40 C.F.R. § 1508.9(b). In the event an EIS is required, the EA may also facilitate its preparation. *See id.* § 1508.9(a)(3).

32. An EIS is intended to provide a more extensive public process and a more thorough analysis than an initial EA. Pursuant to the CEQ regulations, an EIS must include, among other things: (1) "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action," 40 C.F.R. §1501.7; (2) a "full and fair discussion" of the significance of all "direct," "indirect," and "cumulative" effects of the action, *id.* §§ 1502.1, 1502.16(a)–(b), 1508.25(c); and (3) a discussion of "means to mitigate adverse environmental impacts," *id.* § 1502.16(h). *See also* 42 U.S.C. § 4332(2)(C)(i) (explaining that the statement must include "the environmental impact of the proposed action"). An EIS must also describe any adverse environmental effects that cannot be avoided should the proposal be implemented. 42 U.S.C. § 4332(2)(C)(ii). Finally, an EIS must include a discussion of all "reasonable alternatives." 40 C.F.R. § 1502.14(a); *see also* 42 U.S.C. § 4332(2)(C)(iii). This is the "heart of the environmental impact statement" and "should

present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. § 1502.14.

33. Because NEPA documents are intended to fully inform the public, they must reflect transparent decision-making and analysis by the agency. *See* 40 C.F.R. § 1500.1(b) (“Public scrutiny [is] essential to implementing NEPA.”). An agency cannot avoid compliance with NEPA’s EA and EIS requirements by relying on analysis that has not been disclosed to the public.

34. While an agency may cite or “tier to” an earlier NEPA document, such as a “programmatic EIS” that evaluates collectively the impacts of many anticipated future actions, *see* 40 C.F.R. § 1502.20, the agency must still ensure that environmental impacts and alternatives to mitigate those impacts are fully considered and disclosed for each individual major federal action that triggers NEPA.

35. In short, NEPA prohibits major federal project with significant environmental impacts from moving forward until a complete EIS has been developed, with full public participation. Integrating environmental policy into decision-making in this way ensures that agencies do not act uncritically based upon their own preconceived preferences, but instead are accountable for making informed decisions that rest on consideration of alternatives in a transparent public process. NEPA’s purpose is “not to generate paperwork--even excellent paperwork--but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” 40 C.F.R. § 1500.1(c).

36. In keeping with this fundamental purpose, it is axiomatic that “no action concerning the proposal shall be taken which would . . . [h]ave an adverse environmental impact” or “[l]imit the choice of reasonable alternatives” until the NEPA process has concluded.

40 C.F.R. § 1506.1(a); *see also id.* § 1502.2(f) (prohibiting agencies from “commit[ing] resources prejudicing selection of alternatives before making a final decision”).

The Administrative Procedure Act

37. The APA, 5 U.S.C. §§ 701–706, governs judicial review of an agency’s compliance with NEPA. The APA entitles persons injured by the United States, such as Plaintiffs, to judicial review of agency action causing such injury. 5 U.S.C. § 702.

38. The APA provides that a reviewing court shall “hold unlawful and set aside agency action that it finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” “in excess of statutory jurisdiction [or] authority,” or “without observance of procedure required by law.” 5 U.S.C. § 706(2). The APA also directs a reviewing court to “compel agency action” that has been “unlawfully withheld or unreasonably delayed.” *Id.* § 706(1).

FACTUAL BACKGROUND

39. This case challenges a decision by TVA to invest \$1.2 billion in retrofitting the Gallatin Plant without conducting an EIS or adequately analyzing the cost-effective and environmentally preferred alternative of plant retirement.

The Gallatin Fossil Plant

40. The Gallatin Plant is a large coal-fired plant with four coal boilers. It burns approximately 12,350 tons of coal a day.

41. The plant is located on the banks of the Cumberland River on Old Hickory Lake, a popular recreational reservoir, in Sumner County, Tennessee. It is only a few miles upstream of the town of Gallatin and approximately 30 miles upstream of Nashville.

42. The plant has been operating for 54 years without effective pollution controls to limit its toxic wastewater discharges and harmful air emissions.

43. The Gallatin Plant generates hundreds of thousands of tons of toxic-laden coal combustion waste each year, including 185,000 tons of fly ash and 46,500 tons of bottom ash waste.

44. Fly ash and bottom ash waste contain a variety of toxic metals. EPA has recognized that the effluent associated with coal fly and bottom ash has high concentrations of dangerous constituents including aluminum, arsenic, barium, boron, iron, lead, manganese, mercury, and selenium.

45. In 2011, TVA reported disposing of coal ash waste contaminated with over 2.5 million pounds of toxic metals onsite at the Gallatin Plant, making it the ninth largest disposer of toxic coal combustion waste in the country.

46. The Gallatin Plant was also the fourteenth largest discharger of toxic pollutants to surface waters in the country.

47. Wastewater flows directly from the plant's ash ponds to Old Hickory Lake. Every day, the Gallatin Plant discharges into the lake over 950 million gallons of polluted storm water, process water, and condenser cooling water. Annually, these discharges include almost 50 thousand pounds of toxic heavy metals such as arsenic, mercury, barium, chromium, copper, vanadium, zinc, and selenium. The plant also discharges thermal pollution, oil and grease, suspended solids, and oxidants.

48. The Cumberland River flows past the Gallatin Plant, to the city of Gallatin, and on to Nashville. The Gallatin Water Department's intake is approximately 1.4 miles downstream from the Gallatin coal Plant's waste water discharge points – well within Tennessee's "Critical Source Water Protection Zone" – and provides drinking water to more than 28,000 Gallatin residents. From Gallatin, the Cumberland River flows through downtown Nashville, and provides drinking water to more than half a million Nashville residents.

49. In addition to these toxic wastewater discharges, the Gallatin Plant also impacts the Cumberland River by withdrawing over 930 million gallons of water a day. *See* TVA, Gallatin Fossil Plant – NPDES No. TN0005428 – Application for Renewal, Intake and Effluent Characteristics Form, Outfall 002, at V-1 (May 21, 2009). This equates to roughly one-third of the Cumberland River’s volume during normal flows and a much greater fraction during low- flow conditions and drought periods.

50. The Tennessee Department of Environment and Conservation has observed that, to sustain normal operations, the Gallatin Plant requires more water than the Cumberland River can provide during low-flow conditions that may recur every 10 years. *See* Tennessee Department of Environment and Conservation, National Pollutant Discharge Elimination System Permit No. TN0005428 for the TVA Gallatin Fossil Plant, Rationale p. 8 (July 1, 2012).

51. Most of the water withdrawn by the Gallatin Plant is used as cooling water, though a significant amount is also used for other plant operations. The Gallatin Plant’s cooling water intake structure kills and harms a significant number of fish and other aquatic life through impingement and entrainment in the plant’s water intake structures.

52. The Gallatin Plant is also a major source of air pollution. According to EPA data, it is the third largest source of greenhouse gases in the state of Tennessee and also emits thousands of tons of other harmful air pollutants that cause serious health problems including asthma, heart attacks, and premature death.

53. The Gallatin Plant site also encompasses important environmental and recreational areas. The site includes a Tennessee Wildlife Management Area (“WMA”), which extends along a peninsula leading into Old Hickory Lake. The WMA is a popular public recreation site for hunting, archery, and birdwatching.

54. Several endangered and threatened species inhabit the Gallatin Plant site. TVA is required to provide the Tennessee Wildlife Resources Agency (“TWRA”) with space to maintain an endangered mussel propagation facility, the Cumberland River Aquatic Center (the “Aquatic Center”), which partially mitigates TVA’s impacts on these species elsewhere in the river system. It is a uniquely successful breeding facility, and is vital to maintaining mussel populations that have been severely diminished by TVA dams. No other facility in the Southeast has been as successful in breeding these endangered species. Endangered mussels also inhabit the Cumberland River and endangered Indiana bats have used the site.

TVA’s Obligation to Retrofit or Retire the Gallatin Plant

55. The pollution problems at the Gallatin Plant are sufficiently severe that TVA cannot continue to operate Gallatin without overhauling the facility.

56. In 2011, TVA entered into a settlement (called the Federal Facilities Compliance Agreement or “FFCA”) with the U.S. Environmental Protection Agency (“EPA”) and a parallel Consent Decree with Alabama, Kentucky, Tennessee, North Carolina, and three non-profit environmental organizations (including the Sierra Club) to resolve serious alleged Clean Air Act violations at its coal plants. These agreements resulted in, among other things, an \$8 million federal penalty against TVA and a commitment to retire many TVA coal units.

57. With respect to most remaining coal units in TVA’s fleet, including Gallatin, the FFCA and Consent Decree set a series of deadlines for TVA to retrofit or retire. In Gallatin’s case, TVA must retire the plant if it does not install pollution controls or convert the plant to biomass by the end of 2017.

58. Federal Clean Air Act rules, including the Mercury and Air Toxics Standards, 77 Fed. Reg. 9,304 (Feb. 16, 2012), also require outdated plants such as Gallatin to install pollution controls in order to continue running past compliance deadlines in April 2015 or April 2016.

59. On August 18, 2011, the TVA Board of Directors approved a resolution authorizing TVA's CEO to spend up to \$1.1 billion to construct pollution control retrofits and associated facilities at the Gallatin Plant. The Life Extension Project is now estimated to cost \$1.2 billion. Without this overhaul, the plant would be required to close by the end of 2017 at the latest.

The Life Extension Project

60. The Life Extension Project comprises seven related upgrades to the Gallatin Plant and associated infrastructure: (1) installation and operation of dry flue gas desulfurization (or "smokestack scrubber") systems on all four coal-fired units, and related construction of a new air emission stack; (2) installation and operation of pulse jet fabric filters on all four coal-fired units; (3) installation and operation of an activated carbon injection system; (4) installation and operation of four separate selective catalytic reduction systems; (5) construction and operation of two new dry coal combustion waste landfills to accept dry fly ash and scrubber waste; (6) construction of new transmission lines and switchyard modifications to provide power for the new scrubber systems; and (7) construction of new and upgraded haul roads to deliver pebble lime, activated carbon, and ammonia for the pollution controls, and to transport coal combustion waste to the onsite landfills.

61. While the Life Extension Project will substantially reduce air emissions from the Gallatin Plant, it will allow for significant ongoing pollution that would be eliminated entirely with plant closure. Even if the proposed air pollution controls consistently operate to the limits of their performance capabilities, the Gallatin coal units would still emit over 8 million tons of carbon dioxide (CO₂), 4,442 tons of sulfur dioxide (SO₂), 1,100 pounds of nitrogen oxides (NO_x), and 39.2 pounds of toxic mercury pollution every year.

62. Further, the air pollutants that are captured by the new pollution control devices will not disappear. The installation of air pollution controls, along with the potential to switch to a higher-sulfur fuel blend, will cause the Gallatin Plant to generate two- to five- times more coal combustion waste (including scrubber sludge) than it currently does, resulting in disposal of 411,000 – 877,000 tons of waste per year.

63. The Gallatin Plant's waste will also increase in toxicity because it will contain harmful pollutants that would otherwise exit the stack.

64. The bulk of this pollutant-laden ash and sludge will be stored in two massive new landfills (the "North Rail Loop landfill" and "South Rail Loop landfill") overlooking Old Hickory Lake.

65. Each landfill will be approximately 135 feet tall—roughly the height of a 12 story building—in order to accommodate TVA's planned increases in solid waste production from Gallatin.

66. The proposed landfills would be located in the Gallatin Steam Plant Wildlife Management Area ("WMA") which, as described above, is a popular outdoor recreation area. To make room for the landfills, TVA will clear the forest in the WMA.

67. Even before initiating the NEPA process, TVA reduced the size of the Gallatin Steam Plant WMA from 1,500 acres to 229 acres in order to accommodate the proposed landfills.

68. Although TVA plans to delay construction of the South Rail Loop landfill, this landfill is inextricably related to the Life Extension Project. TVA explained that the purpose of the landfills is to accommodate waste from the Gallatin Plant for 20 years. Yet according to TVA's own calculations, the North Rail Loop landfill will reach its capacity in only 7 to 15 years, at which point TVA will have to begin using the South Rail Loop landfill.

69. TVA proposes to locate the South Rail Loop landfill in an area latticed with karst topography. Karst formations are particularly vulnerable to erosion and sinkholes, which can cause the linings of landfills to rupture. Sinkholes have been reported within the footprint of the South Rail Loop landfill site. The location of the landfill therefore exacerbates the risk of catastrophic failure and damages.

70. TVA deferred conducting a hydrogeologic investigation necessary to determine the impacts and risks of the South Rail Loop landfill, even though it acknowledged that “more in-depth investigation is needed in this proposed disposal area.”

71. TVA asserted that it analyzed alternative landfill sites based on a number of factors listed in the Final EA, but did not make this analysis public.

72. The proposed landfills and new haul roads will destroy 2.24 acres of wetlands. Wetlands provide important ecological values particularly within the WMA, which offers habitat for a rich array of birds and other species. The loss of these wetland areas would be particularly significant, as wetlands comprise less than one percent of land uses in the Cumberland River watershed.

73. The new landfills will also generate new water pollution. Runoff from the landfills would introduce an average of 26,000 and up to 300,000 gallons of leachate into the environment each day. The landfills will also produce an average of 340,000 gallons of stormwater each day.

74. Operation of the scrubber system would also produce new wastewater streams comprising stormwater runoff from reagent storage areas and wastewater from equipment washing. The selective catalytic reduction system would add ammonia to the wastewater stream and would create the potential for releases of dangerous levels of ammonia. Increased discharges of copper and thallium from the retrofits could exceed the instream water quality standards for the Cumberland River.

75. By allowing the plant to continue operating, the Life Extension Project ensures that the plant will continue to discharge hundreds of millions of gallons of wastewater containing toxic heavy metals every year for decades to come.

76. The Life Extension Project will further degrade the river ecosystem by killing fish and other aquatic life, as the dry flue gas desulfurization system will draw an additional 4 million gallons of water from the Cumberland River each day.

77. The Life Extension Project will also require relocation of the uniquely successful Cumberland River Aquatic Center. In the summer of 2012, before TVA initiated the public NEPA process for the Life Extension Project, TVA informed TWRA that it would need to dismantle and close the center by March of 2013.

78. After receiving strong objections from the U.S. Fish and Wildlife Service, TVA offered to assist the Aquatic Center with its relocation. At that point the Aquatic Center had already been largely dismantled, with lasting effects.

79. As part of the dismantling effort, TWRA was forced to release endangered pink mucket pearly mussels into the environment ahead of schedule, reducing their survival odds. TWRA also did not have time to tag these mussels as part of its ongoing study of recovery efforts. Other facilities that propagate endangered mussels have stopped sending juvenile mussels to the Aquatic Center, which reduces these mussels' survival rate and interferes with TWRA's breeding program. In addition, TWRA was forced to put on hold projects to propagate or rear federally listed species, including endangered mussels, snails, and salamanders.

80. The Life Extension Project may affect other endangered and threatened species as well. TVA noted that the endangered lake sturgeon could be impinged or entrained in the water intake system of the new, relocated Aquatic Center, but has not evaluated this potential impact.

81. Ammonia discharges from the Gallatin Plant also have the potential to impact endangered species such as the pink mucket pearly mussel. The pink mucket and other freshwater mussels are sensitive to ammonia, and can be adversely affected at lower acute and chronic ammonia concentrations than those currently allowed by EPA.

82. In short, the Life Extension Project will perpetuate and intensify the Gallatin Plant's many harmful effects on the environment. The project will increase water pollution and solid waste production, turn a Wildlife Management Area into a dump site, displace an endangered species breeding facility, and emit millions of tons of carbon dioxide and thousands of tons of sulfur dioxide, nitrogen oxides, and other harmful pollutants into the atmosphere each year. By pursuing this project, rather than alternatives to coal-fired generation at Gallatin, TVA has locked in decades of significant environmental impacts.

TVA's Decision-Making Process

83. TVA committed itself to the Life Extension Project long before it began, much less completed, the NEPA process.

84. On March 2, 2011, TVA issued its most recent Integrated Resource Plan ("2011 IRP"). The 2011 IRP and companion EIS were designed to serve as a generic "road map" for TVA's future generating asset management. As such, the IRP and EIS did not analyze retirement or retrofit decisions at the Gallatin Plant or any other specific coal plant units. The IRP did, however, generally recommend retiring a significant portion of TVA's coal power fleet.

85. Without undertaking any further public analysis, TVA's Board approved the Life Extension Project in August 2011, long before the NEPA process was concluded (March 2013) or even initiated (October 2012). The Board resolution of August 18, 2011 authorized TVA staff's proposal for "installation of dry scrubbers, baghouses, a selective catalytic reduction system, and associated equipment at the Gallatin Fossil Plant . . . with a budget of up to \$1.1 billion," and

delegated “that the CEO has the authority to take such actions, including the execution of such agreements and other instruments as may be necessary to implement the ALF Project and the GAF Project within the scope and budget approved by the Board.” Although the approval was ostensibly conditioned on completion of a NEPA review, the Board’s retrofit decision was already determined and TVA staff moved the project forward aggressively, entering into contracts, conducting private analyses, and ordering physical changes to the site before the NEPA process was completed.

86. Outside of the NEPA process, TVA claims to have conducted an internal analysis regarding “various possible scenarios related to pollution controls at Gallatin,” according to a letter from TVA to Sierra Club counsel.

87. TVA did not share this private, internal analysis with the public. TVA stated in its letter that it “withheld computer models contain[ing] data from various model runs made by TVA engineers and subject matter experts used to make a final recommendation as to pollution controls at Gallatin to TVA decision makers.” Based on this internal evaluation, TVA decided to proceed with the Life Extension Project.

88. In the summer of 2012, before initiating the NEPA process, TVA ordered TWRA to dismantle the Cumberland River Aquatic Center on the Gallatin site to make way for pollution control equipment. TVA instructed TWRA to vacate the site by March 2013. As a result, TWRA was forced to release endangered mussels back into the wild, and to suspend its mussel breeding and propagation activities. TWRA would not have dismantled the Center had TVA not issued these orders.

89. TVA entered into contracts for the design and construction of the Life Extension Project no later than December 2012, before TVA had completed its NEPA process.

90. With its decision already made and partially implemented, TVA issued the Draft EA on October 17, 2012.

91. TVA did not engage the public in scoping or provide for a public hearing, despite requests by Plaintiffs and other organizations for a hearing based on the significance of the Life Extension Project and the controversy surrounding it.

92. The Draft EA considered only three options in any detail: (1) Operating the Gallatin Plant without any controls indefinitely into the future (an option which would be illegal and inconsistent with TVA's prior management decisions); (2) installing pollution controls on one side of a drainage ditch; or (3) installing pollution controls on the other side of the drainage ditch. TVA did not consider any options to retire the plant, in whole or in part, or to replace it with cleaner energy alternatives, such as energy efficiency or renewable energy, or with natural gas generation.

93. On November 30, 2012, Plaintiffs submitted comments on the Draft EA. These comments demonstrated, among other things, that the Draft EA:

- a. failed to take a hard look at environmental impacts of the Life Extension Project as required under NEPA;
- b. inaccurately characterized environmental impacts resulting from the Life Extension Project as insignificant;
- c. segmented the dry ash landfill construction projects in order to avoid NEPA analysis of their impacts;
- d. identified an illegal "no action" alternative that presented the continued operation of Gallatin beyond 2017 as the environmental baseline for the action; and

e. failed to adequately consider reasonable, environmentally preferred alternatives such as total or partial retirement and replacement with natural gas, renewable, or energy efficiency resources.

94. On December 17, 2012, Sierra Club submitted further comments on the Draft EA, based on documents TVA released after the comment period had closed. TVA agreed to include these comments in the record and consider them. The comments demonstrated, among other points, that (i) the Gallatin Plant would likely violate Clean Air Act standards even after the completion of the Life Extension Project, and (ii) TVA had taken major federal actions before completing the NEPA process, including ordering the Cumberland River Aquatic Center to close and entering into contracts for pollution control equipment.

95. Approximately 1,200 other individuals and organizations also commented on the proposed Life Extension Project in the Draft EA. The vast majority of these comments called for an EIS and opposed the Life Extension Project as proposed.

The Final Environmental Assessment and Decision

96. On March 15, 2013, TVA issued a Decision Memorandum signed by TVA CEO William D. Johnson, a Finding of No Significant Impact (“FONSI”), and Final EA for “Installation of Emission Control Equipment and Associated Facilities at Gallatin Fossil Plant – Sumner County, Tennessee.”

97. In the Decision Memorandum, Mr. Johnson approved the Life Extension Project after stating that “it is a close question whether to proceed with the projects.”

98. In the Final EA, TVA concluded that there will be no significant environmental impacts from the Life Extension Project and on that basis declined to prepare a detailed EIS. In doing so, TVA erroneously characterized as “insignificant” the construction of two new toxic waste landfills in a recreational area; a two- to five-times increase in waste production; additional

water withdrawals; and continued emissions of millions of tons of harmful air pollutants and discharges of toxic metals.

99. In reaching its conclusion, TVA compared the impacts of its preferred action to the impacts of continued operation of the Gallatin Plant without required air pollution controls, even though continued operation without controls beyond 2017 is both illegal and contrary to TVA's binding management decisions.

100. By its own terms, the Final EA seeks to inform the questions whether to install pollution controls in order to comply with the FFCA, Consent Decree, and federal regulations, and how best to balance TVA's generating resource portfolio. Yet the Final EA summarily declines to analyze the alternative of retirement and replacement with natural gas, energy efficiency, demand response, or renewable energy resources. TVA failed to pursue this analysis even though retirement would: (1) fulfill TVA's obligations under the FFCA, consent decree, and federal regulations; (2) increase the current diversity of TVA's generating resource portfolio, which already relies more heavily on coal-fired power than any other type of power; and (3) be the necessary consequence of electing not to retrofit or convert the plant to biomass.

101. In dismissing the retirement alternative, the Final EA seeks to rely on the IRP, which does not analyze the decision whether to retrofit or retire the Gallatin Plant. The EA also references "additional studies" on Gallatin that TVA has not released to the public. These studies ostensibly include the internal modeling analysis discussed above.

102. The Final EA also fails to address major impacts and risks of the South Rail Loop landfill. This failure is especially troubling in light of TVA's decision to site the South Rail Loop landfill in an area prone to sinkholes, which can cause catastrophic landfill ruptures. The Final EA recognizes that these impacts need to be evaluated, but defers and impermissibly segments this analysis.

103. Finally, the Final EA fails to disclose the underlying data, documents, and analyses that it purports to rely on in evaluating the Life Extension Project and rejecting environmentally preferred alternatives.

FIRST CLAIM FOR RELIEF

(Violation of NEPA and APA – Pre-Determination of Decision)

104. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

105. As NEPA’s implementing regulations make clear, environmental analysis “shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made.” 40 C.F.R. § 1502.5 (referencing *id.* §§ 1500.2(c), 1501.2, and 1502.2)).

106. TVA violated NEPA’s core mandate by making the critical “retire or retrofit” decision on the Gallatin Plant outside of the NEPA process, without public participation and without the benefit of environmental analysis of impacts and alternatives.

107. TVA approved the Life Extension Project and started implementing this decision by entering into construction contracts, conducting private analyses, and ordering changes on the site before it completed the NEPA process. Accordingly, the environmental review process was skewed to facilitate the retrofit decision which had already been made.

108. In keeping with TVA’s predetermined decision to keep the Gallatin Plant running, the Final EA summarily dismisses the fundamental question of whether to retrofit or retire the Gallatin Plant. This approach violates NEPA’s imperative to take a “hard look” at the environmental impacts of proposed actions and to explore and objectively evaluate reasonable alternatives to the proposed action before making decisions and implementing them.

109. In commencing the NEPA process after a decision had been made, TVA violated NEPA and its implementing regulations, 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1500.2(c), 1501.2, 1502.2, 1502.3, 1502.5. This violation further renders the FONSI, Decision Memorandum, and Final EA arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and reviewable under the APA, 5 U.S.C. §§ 701-706.

SECOND CLAIM FOR RELIEF

(Violation of NEPA and APA – Committing Resources Before Completing the NEPA Process)

110. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

111. NEPA’s implementing regulations are designed to “insure that environmental information is available to public officials and citizens before decisions are made and actions are taken.” *Id.* § 1500.1(b).

112. Until the NEPA process is complete and the record of decision is issued, “no action concerning the proposal shall be taken which would . . . [h]ave an adverse environmental impact” or “[l]imit the choice of reasonable alternatives.” 40 C.F.R. § 1506.1(a).

113. NEPA regulations further prohibit agencies from “commit[ing] resources prejudicing selection of alternatives before making a final decision.” *Id.* § 1502.2(f).

114. After reaching a decision before completing the NEPA process, TVA implemented its decision by entering into construction contracts, and ordering the dismantling of Cumberland River Aquatic Center. TVA’s commitment of resources before and during the environmental review process violated NEPA and the APA.

115. TVA’s premature commitment of resources also prejudiced its selection of alternatives and entrenched its decision to move forward on the Life Extension Project prior to undertaking the required NEPA analysis of the project and reasonable alternatives to it.

116. These resource commitments violate NEPA and its implementing regulations, 40 C.F.R. §§ 1500.1(b), 1506.1(a), 1502.2(f). They further render the FONSI, Decision Memorandum, and Final EA arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and reviewable under the APA, 5 U.S.C. §§ 701-706.

THIRD CLAIM FOR RELIEF

(Violation of NEPA and APA – Failure to Prepare an EIS for the Life Extension Project)

117. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

118. NEPA mandates that federal agencies prepare a detailed EIS for every proposal for major federal action that may “significantly affect the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.3. TVA violated this requirement by relying upon its Final EA rather than preparing an EIS pursuant to a full and transparent public process as was required to inform the complex decision whether to prolong the life of a major pollution source.

119. The range and magnitude of the impacts presented in the Final EA demonstrate that the Life Extension Project will significantly affect the human environment by perpetuating for decades emissions of harmful air pollution, including annual emissions of 8 million tons of carbon dioxide, thousands of tons of soot- and smog-forming air pollution, and nearly 144 tons of hazardous air pollutants; by continuing toxic water pollution and increasing water withdrawals from the Cumberland River; by increasing solid waste generation, creating huge new landfills in geologically unstable areas and wetlands within a Wildlife Management Area; and by disrupting endangered species propagation operations. Continued operation of the Gallatin Plant would thus exert an enormous toll on human health and the environment for years to come. Both the context of the Project – involving a massive coal-fired facility on a public recreational reservoir – and its intensity demonstrate that it has significant effects, warranting an EIS. *See* 40 C.F.R. §1508.27.

120. Moreover, under NEPA's implementing regulations, an EIS is independently required because the Life Extension Project is highly controversial. *See* 40 C.F.R. § 1508.27(b)(4). TVA's NEPA procedures likewise state that an EIS is normally required for "[a]ny major action, the environmental impact of which is expected to be highly controversial." TVA NEPA Procedures § 5.4.1.

121. Over a thousand commenters expressed concerns about the Life Extension Project, including concerns based on scientific evidence about the health impacts of the Gallatin Plant's emissions of carbon dioxide, soot-forming sulfur dioxide, smog-forming nitrogen oxides, and hazardous air pollutants; the impacts of the proposed landfills to be located in areas with heightened risk of catastrophic failure; the availability of reasonable alternatives which would avoid the need for the Project; and the increased coal combustion waste and surface and groundwater discharges that the Life Extension Project would generate.

122. Finally, an EIS is also required because the Life Extension Project is a significant modification that would allow continued operation of a major power generating facility. Under TVA's NEPA procedures, an EIS is normally required for "[m]ajor power generating facilities." TVA NEPA Procedures § 5.4.1.

123. The Life Extension Project will cost \$1.2 billion and allow the 54-year-old Gallatin plant, a major power generating facility, to continue operating indefinitely, rather than retiring. As such, it should be analyzed in an EIS in keeping with TVA's own procedures.

124. For all of these reasons, TVA's failure to prepare an EIS for the Life Extension Project violates NEPA and its implementing regulations, 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§1502.3, 1508.27, and TVA's own NEPA regulations, § 5.4.1, and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and is reviewable under the APA, 5 U.S.C. §§ 701–706.

FOURTH CLAIM FOR RELIEF

(Violation of NEPA and APA – Failure to Consider a Legitimate No Action Alternative)

125. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

126. TVA's NEPA analysis is also deficient because TVA considered an illegitimate "no action" alternative that illegally obscures the magnitude of the project's harmful environmental impacts.

127. In order to "provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement," an EA must evaluate a legitimate "no action" baseline. 40 C.F.R. § 1508.9(a)(1).

128. NEPA also requires agencies to fully and fairly discuss, rigorously explore, and objectively evaluate, among other things, a "no action" alternative. 42 U.S.C. § 4332(2)(E); 40 C.F.R. §§ 1502.14(d); 1508.9(b). The analysis of the "no action" alternative ensures that the impacts of action alternatives can be compared to an environmental baseline reflecting the status quo.

129. TVA failed to evaluate a legitimate "no action" alternative to the Life Extension Project, asserting instead that the "no action" baseline consists of running Gallatin as an uncontrolled plant in perpetuity.

130. This scenario is both unlawful and it contradicts TVA's existing, binding management decisions. As such, it does not provide an appropriate baseline for evaluating the environmental impacts of its proposed action. To the contrary, if TVA takes "no action," the Gallatin Plant cannot operate past 2017.

131. By relying on a contrary assumption, TVA provides a materially misleading starting point for its environmental analysis. *See* CEQ, Forty Most Asked Questions Concerning

the Council on Environmental Quality's NEPA Regulations, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981) (explaining that the no action alternative should serve as a "benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives").

132. If TVA selected a "no action" alternative that is lawful and consistent with TVA's existing, binding management decisions and legal obligations, TVA would be required to shut down the Gallatin Plant or repower the plant to burn biomass after December 31, 2017. Thus, any impacts from the Gallatin Plant after that date would not occur without the Life Extension Project. This is the proper benchmark for determining significance and the proper framing for an alternatives analysis.

133. By failing to select the appropriate "no action alternative" of ceasing operation of the Gallatin Plant after December 31, 2017, and relying instead on the unlawful "alternative" of running Gallatin as an uncontrolled plant in perpetuity, TVA has violated NEPA and its implementing regulations, 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.14(d), 1508.9(a)(1), 1508.9(b), and its action is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and thus reviewable under the APA, 5 U.S.C. §§ 701–706.

FIFTH CLAIM FOR RELIEF

(Violation of NEPA and APA – Failure to Examine Reasonable Alternatives to the Life Extension Project)

134. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

135. TVA failed to consider in its NEPA analysis reasonable alternatives to the Life Extension Project that would allow for the retirement of the Gallatin Plant, in whole or in part. As a result, TVA violated NEPA's linchpin requirement that agencies consider a reasonable range of alternatives to the proposed action. *See* 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. §§ 1502.14(a), 1508.9(b).

136. TVA failed to “rigorously explore and objectively evaluate” viable alternatives to the Life Extension Project. 40 C.F.R. §§ 1502.14(a), 1508.9(b). These alternatives include retirement and replacement of some or all of the Gallatin coal units with energy efficiency, demand side management, or natural gas, which would fulfill the purposes and needs of the project identified by TVA.

137. Instead, TVA explored only variations of a single alternative: construction of emissions control equipment on one side of the discharge channel or the other.

138. To the extent TVA conducted internal analyses of alternatives to the Life Extension Project, these analyses do not support its NEPA determination because they were not provided to the public.

139. TVA’s failure to rigorously explore and objectively evaluate reasonable alternatives to the Life Extension Project violates NEPA and its implementing regulations, *see* 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. §§ 1502.14(a); 1508.9(b), and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and is reviewable under the APA, 5 U.S.C. §§ 701–706.

SIXTH CLAIM FOR RELIEF

(Violation of NEPA and APA – Failure to Analyze Landfill Impacts)

140. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

141. An EA must “provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement” and discuss “environmental impacts of the proposed action.” 40 C.F.R. § 1508.9(a)–(b).

142. “Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action” must be evaluated together. 40 C.F.R. § 1502.4(a).

Proposed actions are related closely enough if one action “automatically trigger[s]” another; one action “cannot or will not proceed unless” another action is “taken previously or simultaneously”; actions “are interdependent parts of a large action”; actions have “cumulatively significant impacts”; or actions are similar enough that simultaneous analysis is the “best way to assess adequately [their] combined impacts.” 40 C.F.R. § 1508.25(a)(1)–(3).

143. The South Rail Loop landfill is an integral component of the Life Extension Project. Construction of the South Rail Loop landfill is necessary to meet TVA’s goal of accommodating waste from the project for 20 years; is triggered by the creation of waste from the project; and would not proceed without the completion of other components of the project.

144. Yet TVA deferred its analysis of the full impacts and risks of the South Rail Loop landfill.

145. The Final EA therefore impermissibly segments a component of the Life Extension Project and fails to evaluate environmental impacts in order to determine whether an EIS is necessary.

146. TVA must prepare an EIS that sufficiently analyzes and addresses this significant impact of the Life Extension Project. 42 U.S.C. § 4332(2)(C)(i).

147. TVA’s failure to evaluate the impacts of the South Rail Loop landfill violates NEPA and its implementing regulations, 42 U.S.C. § 4332(2)(C)(i), 40 C.F.R. §§ 1508.9(a)–(b), 1502.4(a), 1508.25(a), and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and is reviewable under the APA, 5 U.S.C. §§ 701–706.

SEVENTH CLAIM FOR RELIEF

(Violation of NEPA and APA – Failure to Allow for Public Comment)

148. Plaintiffs incorporate the allegations of the preceding paragraphs as if set forth in full.

149. TVA also illegally failed to provide the public with an opportunity to comment on the Finding of No Significant Impact (“FONSI”), which it issued at the end of its NEPA process.

150. NEPA regulations require agencies to “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.” 40 C.F.R. § 1506.6(a).

151. According to TVA’s NEPA regulations, TVA must make a FONSI available for public review and comment if “[t]he proposed action is, or is closely similar to, an action listed in section 5.4.1,” which includes major power generating facilities and highly controversial actions. TVA NEPA Procedures §§ 5.3.4, 5.4.1. The Life Extension Project falls under both of these categories, and is “closely similar” to both.

152. TVA’s failure to provide for public comment on the Life Extension Project FONSI violates NEPA’s implementing regulations, 40 C.F.R. § 1506.6(a), and TVA’s own NEPA procedures, §§ 5.3.4, 5.4.1, and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and is reviewable under the APA, 5 U.S.C. §§ 701–706.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Issue a declaratory judgment stating that the TVA has violated NEPA and its implementing regulations in the respects set forth above;
- B. Issue an injunction requiring the TVA to comply with the provisions of NEPA and its implementing regulations as described above;
- C. Order that TVA’s Decision Memorandum for the Final EA and FONSI, dated March 12, 2013, be vacated, set aside, or rescinded;
- D. Order TVA’s Final EA (issued on March 12, 2013) and FONSI (dated March 11, 2013) be vacated, set aside, or rescinded;

E. Issue an injunction prohibiting the TVA from taking any further action related to the Life Extension Project until it has complied with all the requirements of NEPA and its implementing regulations;

F. Allow Plaintiffs to recover all costs of this action, including reasonable attorneys' fees; and,

G. Grant Plaintiffs such further and additional relief as the Court deems necessary and appropriate.

Respectfully submitted this 25th day of April, 2013.

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