

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SIERRA CLUB
85 Second St., 2nd Floor
San Francisco, CA 94105

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
ENERGY; STEVEN CHU; CAROL
M.BORGSTROM; and RICHARD A. HARGIS,
JR.**
1000 Independence Ave., SW
Washington, DC 20585

Defendants.

Civ. No. _____

**COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE RELIEF**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This case challenges large-scale federal investment in coal-fired power generation by the Department of Energy (“DOE”). President Obama has announced the goal that “by 2035, 80 percent of America’s electricity will come from clean energy sources” and has pledged government investment in clean energy technology, stressing that: “We’re not just handing out money. We’re issuing a challenge.” However, in administering federal grant and loan guarantee programs, DOE is not challenging industry to propose cutting-edge projects that rely on genuinely clean energy resources. Rather, industry is dictating the range of projects considered for federal financing, and DOE is ignoring its obligation under the National Environmental Policy Act (“NEPA”) to vet environmentally preferred alternatives. As a result, DOE is poised to award subsidies worth billions of dollars to construct coal-fired power plants that will emit millions of tons of carbon dioxide (“CO₂”) every year. In failing to honor its NEPA obligations,

DOE is missing an opportunity to spur development of clean energy technologies and to help arrest climate change.

2. DOE's recent award of federal funding to the Mississippi Power Company to develop a 582-megawatt ("MW") mine-mouth coal plant in Kemper County, Mississippi epitomizes irresponsible decision-making in the absence of meaningful NEPA analysis. Mississippi Power's proposed "Plant Ratcliffe" would burn lignite coal from a new 12,000-acre strip mine. In addition to extensive and irreversible damage to streams and wetlands from the proposed mining operation, the plant would burden surrounding communities with toxic air pollution, water pollution, and waste disposal problems. The entire complex, including the mine, could also emit greenhouse gases equivalent to 5.7 million tons of CO₂ every year. While Mississippi Power maintains publicly that the plant will be designed to capture some portion of its CO₂ emissions, the plant's air permit does not impose any emission limits for CO₂ or otherwise require the plant to undertake carbon capture and sequestration ("CCS"), and DOE has not conditioned funding on any such CCS requirement. In essence, DOE is using "clean energy" funds to back a project that will inflict all of the environmental harms associated with conventional coal-fired generation of electricity.

3. Moreover, DOE has elected to finance the Ratcliffe coal plant without fully disclosing, much less attempting to avoid or mitigate, its environmental impacts, and without undertaking any meaningful analysis of alternatives. With this lawsuit, Plaintiff Sierra Club seeks to enjoin DOE from releasing federal funding and from approving federal loan guarantees for the Ratcliffe coal plant until DOE complies with NEPA and confronts the global warming impacts and other environmental consequences of this project both individually and cumulatively in combination with other federally funded projects.

JURISDICTION AND VENUE

4. This action arises under the National Environmental Policy Act, 42 U.S.C. §§ 4321, et seq., and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706.

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-2202.

6. Venue lies in the District of Columbia pursuant to 28 U.S.C. § 1391(e) because Defendant DOE has its principal office in this District; and a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this District.

PARTIES

7. Plaintiff Sierra Club is a nationwide conservation organization with more than 1.4 million members and supporters. The Sierra Club is America’s oldest and largest grassroots environmental organization. The mission of the Sierra Club is: “To explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.” To this end, the Sierra Club is engaged in a nationwide campaign to reduce dependence on coal-fired power. The Sierra Club is currently litigating to stop construction of new coal plants and to force the clean-up or retirement of existing coal plants across the country. The Sierra Club is leading advocacy efforts to pass legislation to curb greenhouse gas emissions, and is collaborating with state and local governments to promote energy efficiency, conservation, and increased reliance on renewable energy.

8. Sierra Club members live and work in the Mississippi communities—including Kemper County, Lauderdale County, and Harrison County—that will most likely be impacted by pollution from the Ratcliffe coal plant. Sierra Club members include senior citizens, people with asthma, pregnant women, and other individuals who are especially vulnerable to harm from exposure to very fine particulate matter, ground-level ozone, mercury, and other harmful pollutants, including hazardous air pollutants, that would be emitted from the Ratcliffe coal plant.

9. Sierra Club members who live in the immediate vicinity of the proposed project will suffer the irreversible loss of undeveloped forest and agricultural lands that will be destroyed and replaced by a sprawling industrial operation.

10. Sierra Club members also include landowners who live and farm in the immediate vicinity of the proposed Ratcliffe coal plant, and many more farmers and ranchers who are severely impacted by drought associated with global warming and climate change. Given Mississippi's location adjacent to the Gulf of Mexico, sea level rise and increased hurricane frequency and intensity are likely to be among the most severe consequences of climate change for the state.

11. The Ratcliffe coal plant and neighboring mine would not be built without federal assistance from DOE. Thus, DOE's financing decision, following its failure to undertake required analysis under NEPA, injures the interests of the Sierra Club and its members in breathing clean air, drinking clean water, and curbing greenhouse gas emissions that cause global warming. Crucially, as DOE acknowledges, this project would not go forward absent assistance from the Department.

12. Defendant United States Department of Energy is a federal agency with its principal offices located at 1000 Independence Ave., SW, Washington, DC 20585. DOE is the lead agency responsible for the environmental review of Mississippi Power's proposed Ratcliffe coal plant.

13. Defendant Dr. Steven Chu is the Secretary of the United States Department of Energy and in that capacity has final responsibility for actions taken by DOE. Dr. Chu's principal place of business is located in Washington, DC. Dr. Chu is sued in his official capacity.

14. Defendant Carol M. Borgstrom is the Director of DOE's Office of NEPA Policy and Compliance and in that capacity has management responsibility for actions taken by DOE, including DOE's compliance with NEPA. Ms. Borgstrom's principal place of business is located in Washington, DC. Ms. Borgstrom is sued in her official capacity.

15. Defendant Richard A. Hargis, Jr. is the NEPA Document Manager for DOE's National Energy Technology Laboratory and in that capacity has management responsibility for actions taken by DOE, including DOE's compliance with NEPA. Mr. Hargis' principal place of business is located in Pittsburgh, PA. Mr. Hargis is sued in his official capacity.

DOE FINANCING FOR COAL-FIRED POWER PLANTS

16. Recognizing that the development of cutting-edge energy solutions will require government investment, Congress has established several programs to provide funding for private sector projects that help to advance and commercialize new technologies.

DOE's Loan Guarantee Program

17. Of relevance here, the Energy Policy Act of 2005 ("EPAAct05"), 42 U.S.C. §§ 15961, et seq., authorizes the Secretary of Energy to award loan guarantees for energy

projects that “avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases” and “employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.” 42 U.S.C. § 16513. Section 1703 of EPAAct05 identifies a broad range of eligible project categories, including: renewable energy system; carbon capture and sequestration practices and technologies; efficient electrical generation, transmission, and distribution technologies; and efficient end-use energy technologies. See 42 U.S.C. § 16513(b).

18. Only projects that employ truly innovative technologies—those that typically would be unable to obtain conventional private funding due to high technology risks—are eligible for Section 1703 loan guarantees. See 10 C.F.R. § 609.2. Projects that employ technologies that are already in use in the commercial marketplace do not qualify for participation in the Loan Guarantee Program. See id. § 609.10(d)(1).

19. To further government investment in eligible clean energy projects, Title XVII authorizes DOE to guarantee loans for up to 80 percent of total project costs provided the total principal loan amount does not exceed \$4 billion. 42 U.S.C. §§ 16512(c), 16515(a). Each year, the amount of federal funds available to support such loan guarantees is capped by Congressional appropriation.

DOE’s Clean Coal Power Initiative

20. In addition to the federal Loan Guarantee Program, Congress established the Clean Coal Power Initiative (“CCPI”), a modest grant program that provides limited financial assistance for projects demonstrating advanced coal-based power generation technologies at the commercial scale. See 42 U.S.C. §§ 15961-15965. Title IV of EPAAct05 provides for the appropriation of \$1.8 billion to fund such projects. See 42 U.S.C. § 15962(b)(1)(A).

21. The CCPI eligibility criteria require that a project “advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in commercial service or have been demonstrated on a scale that the Secretary determines is sufficient to demonstrate that commercial service is viable as of August 8, 2005.” 42 U.S.C. § 15962(a). To date, DOE has selected 10 projects—including the Ratcliffe coal plant—that together will receive over \$1.6 billion in CCPI assistance.

DOE’S DUTIES UNDER NEPA

22. In issuing loan guarantees and allocating CCPI funds, the DOE must comply with NEPA. NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). As such, NEPA requires federal agencies to consider environmental harms and the means of preventing them in an environmental impact statement (“EIS”) before approving “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). “Major federal actions” include projects such as the Ratcliffe coal plant that are “entirely or partly financed . . . by federal agencies.” 40 C.F.R. § 1508.18(a).

23. In preparing an EIS, agencies must disclose the “environmental consequences” of a proposed agency action, including its direct, indirect, and cumulative impact. See id. §§ 1502.16(a), (b); 1508.8. As defined by regulation, cumulative impact means “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” Id. § 1508.7.

24. Further, agencies must “[r]igorously explore and objectively evaluate all reasonable alternatives” to a proposed action. 40 C.F.R. § 1502.14(a). Consideration of alternatives is “the heart of the environmental impact statement,” because it compels agencies to

“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.” Id. Because the definition of the purpose and need of an agency action will determine the reasonable range of alternatives to be analyzed, an agency may not define such purpose and need too narrowly.

DOE’S PROJECT SELECTION AND ENVIRONMENTAL REVIEW PROCESS

25. DOE has broad discretion both to select and to shape the projects that receive CCPI funds, and has even greater discretion to issue loan guarantees, which may be awarded to a wide variety of projects that are wholly unrelated to coal-fired generation. Nevertheless, DOE takes the position that it can consider only two alternatives in an EIS for a CCPI award or a loan guarantee—that is, the “action alternative” as it is proposed by the project applicant and a “no action” alternative to deny the requested federal assistance. In other words, DOE allows industry to present proposals on a “take it or leave it” basis and declines to consider potential improvements to a given project, much less different proposals that the Department itself could solicit.

26. The selection process for the Ratcliffe coal plant is illustrative of this approach to implementing NEPA. In 2004, DOE opened its second of three rounds of solicitation for CCPI project proposals and announced a goal of funding projects that: “(1) demonstrate advanced coal-based technologies that have progressed beyond the research and development stage to a point of readiness for testing at a scale that can be readily replicated into commercial practice within the electric power industry; and (2) accelerate the likelihood of deploying the demonstrated technologies for widespread commercial use in the electric power sector.”

27. After receiving 13 applications in response to this solicitation, DOE prepared a summary environmental “critique” of eleven of the proposals based on information provided by the applicants. All of the information in the environmental critique, including the identity of the applicants and the nature of the projects submitted, remains confidential. This preliminary environmental “review” was never subject to public comment or public participation of any kind.

28. In late 2004, four projects were selected to receive CCPI funding. Among these, the Ratcliffe coal plant was awarded a total of \$293 million (\$23 million having been granted previously), and another coal-fired power plant—the 1,200-MW Mesaba Energy Project—was awarded \$36 million. The other two projects focused on pollution control technology for coal-fired power plants.

29. On September 22, 2008, DOE announced its solicitation of applications for a total of \$8 billion in Section 1703 loan guarantees for “coal-based power generation and industrial gasification facilities that incorporate carbon capture and sequestration or other beneficial uses of carbon and for advanced coal gasification facilities.” DOE, Loan Guarantee Solicitation Announcement, DE-FOA-0000008 (Sept. 22, 2008), *available at* lpo.energy.gov/wp-content/uploads/2010/09/FE_Sol9_22_08.pdf. While DOE has the discretion to offer loan guarantee funding opportunities for a wide variety of energy projects, it limited its September 2008 solicitation to a narrow category of projects that included its previous selections for CCPI funding—the Ratcliffe and Mesaba projects.

30. In the same month that it announced its solicitation for Loan Guarantee Program proposals for advanced coal technology, DOE initiated the NEPA process to award CCPI funds and a loan guarantee to the Ratcliffe coal plant. In November 2009, DOE announced the release of a draft EIS and invited the public to submit comments by December 21, 2009. The Sierra

Club responded with lengthy comments that emphasized the need for meaningful analysis of alternatives and further identified alternatives that merited consideration in the final EIS.

31. DOE declined to give any detailed consideration to alternatives other than Mississippi Power's preferred alternative and the "no action" alternative. With respect to alternatives that would be eligible for CCPI funds, DOE refused to consider a single alternative that would impose binding requirements to undertake carbon capture and sequestration. Indeed, Mississippi Power does not have the capacity to sequester CO₂ itself, but proposes to deliver any captured CO₂ offsite to oil fields where it would be injected into subsurface reservoirs for purposes of extracting crude oil. DOE did not consider an alternative that would require such injection, let alone sequestration methods that do not add to the supply of dirty fossil fuels.

32. DOE also refused to consider alternatives that would allow for on-site carbon sequestration or that would involve any alternative locations of a CCPI-funded project. DOE did not consider awarding CCPI funds to a project without an on-site lignite coal mine nor did it consider alternatives that demonstrated gasification technologies other than Southern Company's TRIG™ system, for instance oxygen-blown gasification or an air-cooled plant design.

33. With respect to alternatives that would be eligible for loan guarantees, DOE made no effort to consider renewable energy projects or conservation and energy efficiency projects of any kind. Instead, DOE focused solely on carbon "capture-ready" integrated gasification combined cycle ("IGCC") proposals that would do little or nothing to improve upon technology that already has been commercially demonstrated.

34. DOE did not consider fully the potential cumulative impacts of its action and undertook a cursory analysis of cumulative global warming impacts.

35. DOE released the final EIS in May 2010 and issued a Record of Decision (“ROD”) authorizing the grant of \$270 million in CCPI financial assistance to Mississippi Power for the construction and operation of the Ratcliffe coal plant. While DOE has indicated that its decision regarding a Section 1703 loan guarantee would be announced in a subsequent ROD, DOE has formally concluded its environmental review for the loan guarantees as well as the CCPI funding award.

ENVIRONMENTAL IMPACTS OF THE RATCLIFFE COAL PLANT

36. Absent financial assistance from the federal government, the Ratcliffe project, by DOE’s own admission, would be unable to move forward. However, on the strength of DOE’s final EIS and ROD, Mississippi Power is expected to begin construction in earnest—with very serious environmental consequences.

37. The 582-MW Ratcliffe coal plant would sprawl across 1,650 acres in central eastern Mississippi. The associated surface mine would disturb an additional 12,000 acres of undeveloped land.

38. In addition to 5.7 million tons of CO₂, the plant would emit thousands of tons per year of “criteria” pollutants regulated under the federal Clean Air Act’s National Ambient Air Quality Standards (“NAAQS”): 2,214 tons per year of nitrogen oxides (“NO_x”), which form acid rain and ground-level ozone; 685 tons per year of sulfur dioxide (“SO₂”), which causes asthma and other respiratory illnesses and which, in combination with NO_x, causes acid rain and regional haze; 549 tons per year of particulate matter, which causes serious heart and lung problems and premature deaths; and 183 tons per year of volatile organic compounds (“VOCs”), precursors to the criteria pollutant ozone. The plant would also emit hazardous air pollutants including nearly 400 pounds of lead and an estimated 64.4 pounds of mercury every year.

39. To fuel the plant, Southern Company plans to excavate a 12,000-acre surface mine across lands that are now prime farmland. Mining is slated to unearth 4.3 million tons of lignite coal every year, destroying or disturbing over 30,000 miles of streams and hundreds of acres of wetlands. The operation would require dredging of sedimentation ponds into which runoff and any other liquid wastes resulting from mining activities would drain, settle, and then be discharged into Chickasawhay Creek.

40. Fuel combustion operations at the Ratcliffe coal plant would create a new waste stream that could contaminate the local ground and surface water supply. Coal ash and sludge from coal-fired power plants contain most of the mercury and other toxic heavy metals such as arsenic, cadmium, chromium, and selenium that are originally present in raw coal and that readily leach into water supplies. As a result, coal combustion waste is often highly toxic. Nevertheless, coal combustion waste is exempt from federal hazardous waste regulations, and is subject to minimal regulation under Mississippi state law.

41. Every day, the plant would produce approximately 1,500 tons of coal ash, enough solid waste to fill 26 rail cars to capacity. Nearly all of this waste would be dumped into on-site landfills.

42. In addition to the generating units and the lignite surface mine, other plant facilities would include electrical power transmission lines and substations, two cooling towers, a cooling water supply pipeline, a natural gas pipeline, a flare derrick, access roads, open coal storage pits, crushed coal storage silos, coal milling and drying facilities, coal conveying equipment, and coal ash disposal units. Ultimately, this sprawling complex would industrialize what now is undeveloped agricultural and forest land and burden neighboring communities with air and water pollution for generations to come.

43. The county in which Mississippi Power has chosen to site its coal plant is home to some of the poorest communities in the state. The people living in the vicinity (and downwind) of the Ratcliffe coal plant will suffer from impaired air quality and increased water pollution, among other adverse impacts. Such burdens will be borne disproportionately by low-income communities whose residents will not be able to relocate.

Global Warming Impacts

44. The Ratcliffe coal plant would contribute to global warming, emitting up to 5.7 million tons of CO₂ and CO₂ equivalents every year. The cumulative impact of these emissions, in combination with emissions from other new coal-fired power plants financed by the federal government, will be very large. For example, the Minnesota-based Mesaba Energy Project, which has been awarded \$36 million in funding by DOE, would emit an anticipated 11.2 million tons of CO₂ per year. Together, the Ratcliffe coal plant, the Mesaba plant, and other foreseeable DOE-financed plants, could account for greenhouse gas emissions equivalent to those emitted by 3 million passenger vehicles.

45. As the Supreme Court has made clear, federal agencies can no longer afford to ignore the monumental threats posed by climate change. Massachusetts v. EPA, 549 U.S. 497 (2007). A National Research Council Report, cited by the Court, has “identifie[d] a number of environmental changes that have already inflicted significant harms, including the global retreat of mountain glaciers, reduction in snow-cover extent, the earlier spring melting of rivers and lakes, and the accelerated rate of rise of sea levels during the 20th century relative to the past few thousand years.” Id. at 521 (internal quotations, citations, and alterations omitted). In the future, the consequences of global warming promise to be even more severe. According to Michael MacCracken, a climate scientist, also favorably cited by the Court, “qualified scientific experts

involved in climate change research have reached a strong consensus that global warming threatens (among other things) a precipitate rise in sea levels by the end of the century, severe and irreversible changes to natural ecosystems, a significant reduction in water storage in winter snowpack in mountainous regions with direct and important economic consequences, and an increase in the spread of disease.” *Id.* (internal quotations and citations omitted) (further noting MacCracken’s “eerily prescient” observation that rising ocean temperatures may contribute to the ferocity of hurricanes).

FIRST CAUSE OF ACTION

Violation of NEPA

(Failure To Consider a Reasonable Range of Alternatives to DOE’s Award of CCPI Funding)

46. Plaintiff hereby realleges and incorporates paragraphs 1 through 45.

47. DOE violated NEPA in selecting the Ratcliffe coal plant for CCPI funding without giving detailed consideration to any alternatives other than building the coal-fired power plant and associated lignite strip mine proposed by Mississippi Power.

48. Under NEPA, DOE was required to “[r]igorously explore and objectively evaluate all reasonable alternatives,” with explicit attention to their respective “[e]nergy requirements and conservation potential.” 40 C.F.R. § 1502.14(a). Yet, aside from its preferred alternative of funding the Ratcliffe coal plant project, DOE considered only one other alternative in detail: the “no action” alternative of not funding the project. Thus, DOE summarily dismissed alternatives involving co-firing biomass with coal, oxygen-blown gasification technology, air-cooled plant design, alternative plant locations, an enforceable requirement that CO₂ be captured and sequestered, and construction of the power plant without the on-site lignite mine—all of which were suggested in comments submitted by Plaintiff. This exclusive focus on

Mississippi Power's proposed coal plant foreclosed an informed choice between viable alternatives.

49. DOE's failure to consider a reasonable range of alternatives was arbitrary, capricious, an abuse of discretion, and contrary to NEPA and its implementing regulations. See id.; 5 U.S.C. § 706(2)(A).

SECOND CAUSE OF ACTION

Violation of NEPA

(Failure To Consider a Reasonable Range of Alternatives to DOE's Issuance of Loan Guarantee)

50. Plaintiff hereby realleges and incorporates paragraphs 1 through 49.

51. DOE violated NEPA in selecting the Ratcliffe coal plant as a recipient of loan guarantees without giving detailed consideration to any alternatives other than building the coal-fired power plant proposed by Mississippi Power.

52. Under NEPA, DOE was required to "[r]igorously explore and objectively evaluate all reasonable alternatives," with explicit attention to their respective "[e]nergy requirements and conservation potential." 40 C.F.R. § 1502.14(a). Yet, aside from its preferred alternative of issuing loan guarantees for the Ratcliffe coal plant project, DOE considered only one other alternative: the "no action" alternative of not funding the project. Thus, DOE summarily dismissed alternatives involving renewable energy projects or conservation and energy efficiency projects of any kind, which were suggested in comments submitted by Plaintiff. This exclusive focus on conventional coal combustion foreclosed an informed choice between viable alternatives.

53. DOE's failure to consider a reasonable range of alternatives was arbitrary, capricious, an abuse of discretion, and contrary to NEPA and its implementing regulations. See id.; 5 U.S.C. § 706(2)(A).

THIRD CAUSE OF ACTION

Violation of NEPA (Arbitrary Definition of Purpose and Need)

54. Plaintiff hereby realleges and incorporates paragraphs 1 through 53.

55. DOE violated NEPA in defining the purpose and need of its actions so narrowly as to only allow selection of the Ratcliffe coal plant to fulfill such purpose and need.

56. In preparing an EIS, the agency must “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. § 1502.13. Accordingly, the range of alternatives considered in the EIS flows from the agency’s statement of purpose and need. If the purpose and need are defined too narrowly, the agency’s consideration of alternatives is artificially constrained, defeating NEPA’s fundamental aim to identify workable alternatives in time to avoid environmental harm.

57. For the Ratcliffe coal plant final EIS, having so narrowly defined the purpose of its action as demonstration of the feasibility of a specific coal-based technology, i.e., Southern Company’s TRIG™ system, DOE in effect has ensured that construction of the Ratcliffe coal plant as envisioned by Mississippi Power is the only way to achieve such purpose, thus precluding the consideration of any alternatives that do not showcase the Mississippi Power’s chosen technology.

58. From the outset of the NEPA process, DOE’s definition of purpose and need improperly skewed the range of alternatives selected for consideration in the final EIS. This violates NEPA and its implementing regulations. See id. §§ 1502.13, 1502.14. DOE’s failure to state a legitimate purpose and need was arbitrary, capricious, an abuse of discretion, and contrary to law. See id.; 5 U.S.C. § 706(2)(A).

FOURTH CAUSE OF ACTION

Violation of NEPA
(Failure to Assess Cumulative Impacts)

59. Plaintiff hereby realleges and incorporates paragraphs 1 through 58.

60. DOE neglected to consider the cumulative impact of emissions from the Ratcliffe coal plant—including greenhouse gas emissions—in combination with emissions from other coal plants that have been awarded or currently are seeking DOE financing.

61. NEPA requires DOE to consider “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7; see also id. § 1502.16(b). As NEPA’s implementing regulations expressly state, “[c]umulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” Id. § 1508.7.

62. Financing the Ratcliffe coal plant in combination with additional coal plants and other projects that will annually emit millions of tons of CO₂ and other greenhouse gases has a collectively significant impact on global warming. DOE’s failure to address this critically important issue in its final EIS is arbitrary, capricious, an abuse of discretion and contrary to NEPA and its implementing regulations. See id.; 5 U.S.C. § 706(2)(A).

FIFTH CAUSE OF ACTION

Violation of NEPA
(Failure to Disclose All Environmental Impacts and Potential Ways to Avoid or Mitigate Them)

63. Plaintiff hereby realleges and incorporates paragraphs 1 through 62.

64. DOE violated NEPA in failing to take a hard look at and fully disclose all of the environmental impacts that might be caused by the construction and operation of the Ratcliffe coal plant. In failing to provide detailed analysis of potential alternatives that would avoid the

impacts of the Ratcliffe coal plant, DOE violated basic NEPA requirements to identify mitigation measures. See 40 C.F.R. §§ 1502.14(f), 1502.16. DOE's failure to give meaningful consideration to available alternatives and mitigation measures was arbitrary, capricious, an abuse of discretion, and contrary to NEPA and its implementing regulations. See id.; 5 U.S.C. § 706(2)(A).

REQUEST FOR RELIEF

THEREFORE, Plaintiff requests that this Court:

1. Declare that DOE violated NEPA and its implementing regulations in failing to analyze a reasonable range of alternatives to its decision to award CCPI funding to the Ratcliffe coal plant;
2. Declare that DOE violated NEPA and its implementing regulations in failing to analyze a reasonable range of alternatives to its decision to issue federal loan guarantees for the construction of the Ratcliffe coal plant;
3. Declare that DOE violated NEPA and its implementing regulations in failing to state a legitimate purpose and need for the Ratcliffe coal plant project;
4. Declare that DOE violated NEPA and its implementing regulations in failing to consider the Ratcliffe coal plant's cumulative impact on global warming;
5. Declare that DOE violated NEPA and its implementing regulations in failing to take a hard look at all of the significant environmental impacts that might be caused by the Ratcliffe coal plant and ways to avoid or mitigate such impacts;
6. Invalidate DOE's August 12, 2010 Record of Decision;
7. Issue an injunction prohibiting DOE from disbursing CCPI funds to Mississippi Power pending compliance with NEPA;

8. Issue an injunction prohibiting DOE from approving Mississippi Power's loan guarantee application pending compliance with NEPA;
9. Issue an injunction enjoining all construction at the Ratcliffe project site pending compliance with NEPA;
10. Award Plaintiff its reasonable fees, costs, and expenses, including attorneys' fees, associated with this litigation; and
11. Grant Plaintiff such further and additional relief as the Court may deem just and proper.

Respectfully Submitted this 10th day of March 2011,

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