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RE: Notice of Intent to Sue for Violations of the Clean Air Act

To all recipients:

This letter provides notice that Appalachian Voices, Center for Biological Diversity, and Sierra Club (collectively, "Community Groups") intend to file suit against the Tennessee Valley Authority ("TVA") for past and ongoing violations of the federal Clean Air Act, Tennessee's State Implementation Plan, and the Title V operating permit for the Cumberland Fossil Plant, all occurring at the TVA Cumberland Reservation located at 815 Cumberland City Road, Cumberland City, Stewart County, TN 37050.

The TVA Cumberland Reservation contains an existing coal-fired power plant ("Cumberland Coal Plant"). TVA recently began building a new gas-fired power plant nearby on the 2,388-acre Reservation. This gas power plant consists of two combined-cycle methane gas-fired turbines and associated equipment such as auxiliary boilers and fuel heaters ("Cumberland Gas Plant").

Under the Clean Air Act and Tennessee's federally approved State Implementation Plan, before constructing a new facility or modifying an existing facility, the owner or operator must obtain either a "major" or "minor" New Source Review ("NSR") permit, depending on how much additional air pollution will result. Major NSR requires permit applicants to evaluate and control harmful air pollution by taking specific steps, such as conducting preconstruction air monitoring and air dispersion modeling to determine the project's impacts on ambient air quality. Major NSR permit applicants must also evaluate and implement up-to-date pollution control technologies to reduce emissions. And finally, the permitting agency must provide the public with a meaningful opportunity to participate in the major NSR permitting process. In contrast, minor NSR does not require those safeguards for pollution control technology and air quality

impact assessment and, under Tennessee law, does not require an opportunity for the public to comment on a draft permit or on the permitting agency's assessment of the permit application.

Here, before constructing the Cumberland Gas Plant, TVA obtained a "minor" NSR permit based on its representations that the Cumberland Coal Plant and the Cumberland Gas Plant comprise a single stationary source, that the new Gas Plant is a modification to the existing Coal Plant, and that the Coal Plant would retire shortly after the Gas Plant became operational. TVA contended that under the federal Project Emissions Accounting rule,[1] the Coal Plant's historical emissions could be subtracted from the new Gas Plant's emissions when calculating whether the emissions increases caused by the new Gas Plant would exceed applicable significance thresholds and thus require "major" NSR review. The Tennessee Department of Environment and Conservation ("TDEC") accepted TVA's proposal, and the Technical Secretary of the Tennessee Air Pollution Control Board permitted the Cumberland Gas Plant as a "minor" modification of the Cumberland Coal Plant.

Because TVA has now decided to continue operating the Coal Plant alongside the new Gas Plant, TVA's minor NSR permit is insufficient and invalid. In February 2026, the TVA Board of Directors reversed its prior decision to retire the Cumberland Coal Plant by the end of 2028. Because the Cumberland Coal Plant is no longer slated for retirement, TVA cannot subtract its historical emissions to evade applicability of major NSR for the new Gas Plant. TVA recognizes this and recently submitted an incomplete application for a major NSR permit for the Cumberland Gas Plant. Nonetheless, TVA moved forward with constructing and commencing operation of the Cumberland Gas Plant without the required major NSR permit, in violation of the Clean Air Act and Tennessee's State Implementation Plan.

Instead of retiring the Cumberland Coal Plant, TVA has decided to invest over $700 million in life-extension projects to enable its continued operation beyond 2028. This large capital expenditure to extend the life of the Cumberland Coal Plant is part of the same project as the construction of the Cumberland Gas Plant and, as a result, is also subject to Clean Air Act requirements for a major modification.

The Cumberland Gas and Coal Plants together have the potential to emit thousands of tons per year of harmful pollutants such as sulfur dioxide, fine particulate matter, smog-forming nitrogen oxides, and volatile organic compounds.[2] Further, TVA's decision to operate *both* plants without undergoing appropriate regulatory review has left communities in Stewart County and surrounding areas susceptible to significant increases in harmful air pollution.

Unless the violations detailed below are fully addressed, Community Groups intend to file suit under Section 304 of the Clean Air Act, 42 U.S.C. § 7604, on behalf of their

[1] Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting, 85 Fed. Reg. 74890 (Nov. 24, 2020).

[2] *See* TVA, Cumberland Fossil Plant: Combined Cycle Facility Construction Permit Application at 3-1 tbl.3-1 (Dec. 2024), https://perma.cc/F394-ULW4 ("2024 Minor NSR Permit Application") (showing Gas Plant's potential emissions in "CUG" and "CUFAB" columns and showing Coal Plant's historical emissions in "CUF1 & CUF2 (Retired)" column).

organizations and their adversely impacted members, in the U.S. District Court for the Middle District of Tennessee after the applicable notice period has expired. Community Groups intend to seek injunctive relief (1) to stop the unlawful operation of the Cumberland Gas Plant until TVA (a) completes and obtains government approval of the required preconstruction monitoring and source impact analysis and (b) obtains a final PSD permit with enforceable emission limits reflective of the emissions reduction achievable through use of the best available control technology ("BACT"), and (2) to stop or prohibit TVA from constructing any unpermitted life-extension modifications at the Cumberland Coal Plant. Community Groups also intend to seek civil penalties for wholly past and ongoing violations, fees and costs of litigation, and such other relief as the court deems appropriate to address the ongoing violations.

TVA's mission as a public power provider does not entitle it to proceed with unlawful construction and operation of a project that significantly increases air pollution at the expense of clean air and the health of the region's communities. If you would like to discuss any factual or legal issues set forth in this letter, or a possible resolution of this matter during the notice period, please contact the undersigned attorneys.

I. FACTUAL BACKGROUND

A. TVA's Cumberland Coal Plant has been operating for more than fifty years.

The Cumberland Coal Plant began commercial operation in 1973.[3] It is comprised of two coal-fired boilers, two oil-fired auxiliary boilers, and ancillary equipment.[4] Not long after entering operation, the Cumberland Coal Plant, along with TVA's other coal-fired power plants, became the subject of air pollution control regulation and litigation.[5]

The Cumberland Coal Plant is the largest coal plant in the TVA system. In 2024 alone, it burned approximately 4.37 million tons of coal in a single year.[6] Each coal-fired boiler is capable of generating 1,325 megawatts (MW) of power.[7]

Even with certain emissions controls installed pursuant to a Federal Facilities Compliance Agreement with the U.S. Environmental Protection Agency ("EPA") and a Consent Decree with four states and three nonprofit organizations, the Cumberland Coal Plant continues

[3] *Cumberland Fossil Plant*, TVA, https://perma.cc/4JFC-2WWJ.

[4] State of Tenn. Air Pollution Control Bd. Dep't of Env't & Conservation, Operating Permit (Title V) No. 577855 at iii, 15, 40 (July 1, 2021), https://perma.cc/YZJ7-8STV ("Title V Permit No. 577855").

[5] *See, e.g.*, Keel Hunt, *TVA, EPA Pollution Scrubber Squabble Expected to Resume*, The Tennessean, Jan. 9, 1977, at 17-A; Matt Yancey, *Variances Lifted: TVA Warned by State About Air Pollution*, The Tennessean, June 10, 1978, at 2.

[6] TVA, Title V Permit Renewal Application: Cumberland Fossil Plant at 3-6 tbl.3-1 (Dec. 2025), https://perma.cc/26S5-8JBA ("2025 Title V Permit Renewal Application).

[7] *Id.* at 3-7.

to degrade air quality in the vicinity of the plant and throughout the region, with its emissions contributing to visibility impacts in federally protected areas as many as 320 miles away.[8]

B. TVA decided to retire the aging Cumberland Coal Plant by the end of 2028 and received a minor NSR permit for construction of the Gas Plant based on that retirement date.

In 2021, TVA completed an evaluation of its aging coal fleet. Following that evaluation, TVA staff recommended retiring its entire coal fleet by 2038.[9] Specifically, for the Cumberland Coal Plant, TVA decided to retire one coal-fired boiler by the end of 2026 and the other by the end of 2028.[10] At the same time, TVA announced its plan to build the Cumberland Gas Plant.[11]

Although TVA considered the option of continuing to operate the Cumberland Coal Plant indefinitely, it ultimately decided to retire the plant by the end of 2028.[12] According to TVA, its fleetwide evaluation "confirm[ed] that the aging coal fleet is among the oldest in the nation and is experiencing deterioration of material condition and performance challenges."[13] At Cumberland specifically, operational conditions "for which the [coal] plant was not originally designed" had "present[ed] reliability challenges that are difficult to anticipate and very expensive to mitigate."[14] As such, TVA would "continue to be challenged to reliably operate [the Cumberland Coal Plant] on this as-needed basis."[15] Due to those cost and reliability challenges, TVA concluded that the Cumberland Coal Plant should be retired.

To replace generation from one of the retiring coal-fired boilers, TVA decided to construct the Cumberland Gas Plant: "a new natural gas-fueled, 1,450-MW [combined-cycle] plant[.]"[16] The Cumberland Gas Plant is comprised of two gas-fired combined-cycle electric generating units, each with a heat capacity of 4,903 million British thermal units per hour

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[8] AECOM, Regional Haze Reasonable Further Progress Four-Factor Analysis: TVA Cumberland Fossil Plant at 2 (July 29, 2020) (available on EPA rulemaking docket EPA-R04-OAR-2019-0308 in compiled Appendix G-1).

[9] Environmental Impact Statement for Cumberland Fossil Plant Retirement Notice of Intent, 86 Fed. Reg. 25933, 25934 (May 11, 2021) ("Notice of Intent"); TVA, Aging Coal Fleet Evaluation at 12 (May 2021), https://perma.cc/C6N5-BM2M.

[10] Cumberland Fossil Plant Retirement Environmental Impact Statement, Record of Decision, 88 Fed. Reg. 3767, 3767 (Jan. 20, 2023) ("Record of Decision").

[11] *Id.* at 3770.

[12] *Id.* at 3767–68.

[13] Notice of Intent, 86 Fed. Reg. at 25934.

[14] *Id.*

[15] Record of Decision, 88 Fed. Reg. at 3767.

[16] *Id.* at 3770 (edited for clarity).

(MMBtu/hr).[17] Each of those units, in turn, consists of one combustion turbine, one heat recovery steam generator, and one duct burner.[18] The Cumberland Gas Plant also contains two fuel oil-fired boilers, two gas-fired boilers, three dewpoint gas heaters, a diesel-fired emergency fire pump engine, and a cooling tower.[19]

In October 2022, TVA submitted an air permit application to TDEC's Division of Air Pollution Control, seeking authorization to construct the Cumberland Gas Plant as a minor modification of the Coal Plant TVA planned to retire.[20] To support its classification as a minor modification, TVA represented that the Gas Plant's construction and the Coal Plant's retirement constituted a single "project" and that the coal plant's historical emissions could be subtracted from the gas plant's emissions to avoid PSD review.[21] This minor modification classification would allow TVA to bypass major NSR for the entire project and avoid the heightened air quality protections—and public participation requirements—associated with major modifications.

TDEC accepted TVA's proposal to treat the Gas Plant's construction as part of the same project as the Coal Plant's retirement, allowing TVA to subtract the retiring Coal Plant's baseline emissions from the new Gas Plant's increase in emissions and thus permit the Gas Plant's construction as a minor—rather than major—modification to the Coal Plant.[22]

On June 20, 2023, the Technical Secretary of the Tennessee Air Pollution Control Board issued Permit No. 980891, authorizing construction and operation of the Cumberland Gas Plant pursuant to Tennessee's minor NSR program.[23] That permit included Condition G18, requiring one of the coal-fired boilers to "cease operating upon completion of the shakedown periods for both" of the new combined-cycle units, "but no later than December 31, 2026."[24] Condition G18

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[17] State of Tenn. Air Pollution Control Bd. Dep't of Env't & Conservation, Permit to Construct / Modify Air Contaminant Source(s) No. 981885 at 2 (Mar. 27, 2025), https://perma.cc/PCE6-TRMF ("Minor NSR Permit No. 981885").

[18] *Id*.

[19] *Id.*

[20] *See* TVA, Cumberland Fossil Plant: Combined Cycle Facility Construction Permit Application at 3-1 to 3-2 (Oct. 2022), https://perma.cc/4U6R-DJT7 ("2022 Minor NSR Permit Application") (stating PSD review does not apply because the project includes retirement of both coal-fired units and result in a net emissions decrease).

[21] *Id.*

[22] *See* State of Tenn. Air Pollution Control Bd. Dep't of Env't & Conservation, Construction Permit Summary Report: Permit No. 980891 at 2 (June 22, 2023), https://perma.cc/8VB7-3KPT ("TVA may use the reduction in emissions resulting from the retirement of Unit 1 and Unit 2 at Cumberland in the PSD determination (project accounting) for this project.").

[23] State of Tenn. Air Pollution Control Bd. Dep't of Env't & Conservation, Permit to Construct / Modify Air Contaminant Source(s) No. 980891 (June 20, 2023) https://perma.cc/W5UU-S6HL ("Minor NSR Permit No. 980891").

[24] *Id.* at 9.

also required the remaining coal-fired boiler to "cease operating no later than two calendar years following completion of the shakedown periods for both" of the combined-cycle units, "but no later than December 31, 2028."[25]

A few months later, TVA submitted an application seeking to "relax" conditions in Permit No. 980891 applicable to the two existing oil-fired auxiliary boilers' operations.[26] While this increased the emissions estimates for the Gas Plant, TVA continued to represent that major NSR did not apply because the "project" included retirement of both coal-fired units and would not cause a significant net emissions increase.[27] TDEC circulated public notice for the revised permit application in January 2024.[28] In December 2024, TVA submitted a second revised application, requesting several additional changes, including "to remove '2026' from the project timeline."[29]

TDEC did not publish public notice of the second revised application. Instead, without public comment, in March 2025, the Technical Secretary issued Permit No. 981885 for the Cumberland Gas Plant's construction.[30] That permit removed the December 2026 retirement date and instead required both coal-fired boilers to "permanently cease operation no later than December 31, 2028."[31]

In all of its minor permit applications, TVA claimed that major NSR and the related Prevention of Significant Deterioration ("PSD") rules in Tennessee's State Implementation Plan did not apply because the Cumberland Gas Plant's increased emissions would be sufficiently offset by the reduction in emissions from the Cumberland Coal Plant's retirement such that the net emissions increases would not exceed the legal threshold for a major modification.[32] For example, in its December 2024 second revised application, TVA stated:

> Baseline actual emissions from the future retirement of [the Cumberland Coal Plant] Unit 1 and Unit 2 are included when determining whether the project results in a significant emissions increase. As a result, the emission increases from the

[25] *Id.*

[26] TVA, Cumberland Fossil Plant: Combined Cycle Facility Construction Permit Application at 1 (Oct. 2023), https://perma.cc/J2C8-TBEA ("2023 Minor NSR Permit Application").

[27] *See id.* at 3-1 to 3-2.

[28] *Air Notices and Hearings: Public Participation Opportunities*, TDEC (Jan. 22, 2024), https://perma.cc/EET2-RXF5.

[29] Letter from William T. Patterson, TVA, to Michelle Owenby, TDEC (Dec. 13, 2024), https://perma.cc/F394-ULW4.

[30] Minor NSR Permit No. 981885 at 1.

[31] *Id.* at 9.

[32] 2024 Minor NSR Permit Application at 1-1, 3-1 to 3-2; 2023 Minor NSR Permit Application at 1-1, 3-1 to 3-2; 2022 Minor NSR Permit Application at 1-1, 3-1 to 3-2.

> proposed project are below the Prevention of Significant Deterioration (PSD) significant thresholds. Therefore, a PSD analysis is not applicable.[33]

In material accompanying Permit No. 981885, TDEC explained that the Technical Secretary issued a minor NSR permit for the Cumberland Gas Plant because "there is a reasonable presumption that TVA's decision to build new Gas [units] and decommission existing Coal [units], at the same major stationary source, would be jointly planned activities that are technically and functionally interconnected."[34] TDEC also explained that "[b]ecause TVA is decommissioning its Coal [units] less than three years after all new Gas [units] commence commercial operation, TDEC presumes that these activities are substantially related and constitute a single project, in reliance on relevant EPA rules."[35] The Technical Secretary's issuance of Permit No. 981885 thus expressly relied on TVA's decision to retire the Cumberland Coal Plant by the end of 2028.

TVA then began construction of the Cumberland Gas Plant in the summer of 2024[36] pursuant to its minor NSR permit, treating retirement of the Coal Plant and construction of the

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[33] 2024 Minor NSR Permit Application at 1-1.

[34] State of Tenn. Air Pollution Control Bd. Dep't of Env't & Conservation, Construction Permit Summary Report: Permit No. 981885 at 1, attach. 1 at 1 (Mar. 27, 2025), https://perma.cc/Q2BM-F753 ("TDEC Permit No. 981885 Summary").

[35] *Id.*, attach. 1 at 2. In its response to comments attached to the permit summary, TDEC expressly relied on the "substantially related" test set forth in EPA's "2009 [New Source Review] Aggregation Action," which it summarized as "establish[ing] a rebuttable presumption that activities that occurred more than three years apart are not 'substantially related' and therefore, generally, should not be aggregated for purposes of determining whether they are a single modification at Step 1." *Id.*, attach. 1 at 1–2 (citing Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation and Project Netting, 74 Fed. Reg. 2376, 2380 (Jan. 15, 2009)).

[36] *See* **Attachment 1** (showing satellite images of the site from August 17, 2024, through February 27, 2026). These images show that physical construction of the new turbines began before March 2025, the date TVA listed as the "Construction starting date" in its pending PSD permit application. *See* Trinity Consultants, PSD Permit Application: Tennessee Valley Authority / Combined Cycle Project Cumberland Gas Plant, Vol. I, app. E at 4 (May 2026), https://perma.cc/GRK5-CJ39 ("2026 PSD Permit Application") (APC Form 1, Facility Identification). In contrast, this application elsewhere lists the date of "installation" of the two new turbines, their control equipment, and their emissions monitoring devices as "2024–2025." *See id.*, app. E at 10–11 (APC Form 5, Stationary Gas Turbine or Internal Combustion Engine); *id.*, app. E at 14 (APC Form 11, Control Equipment: Miscellaneous); *id.*, app. E at 15 (APC Form 14, Control Equipment: Catalytic or Thermal Oxidation); *id.*, app. E at 24–25, 27–28 (APC Form 20, Compliance Demonstration by Continuous Emissions Monitoring). Similarly, the application lists the date of "installation" of the two new auxiliary boilers, the new fire pump engine, and the three new dewpoint gas heaters as "2024–2025." *See id.*, app. E at 32 (APC Form

Gas Plant as a single "project" without review through the PSD program.[37] TVA's social media demonstrated that substantial progress had been made on construction of the Cumberland Gas Plant by April 2025,[38] and news coverage documented that construction was well underway by the summer of 2025.[39]

C. After relying on the Coal Plant's retirement to receive a minor NSR permit to construct the Gas Plant, TVA reversed course and decided to continue operating the Coal Plant beyond its 2028 retirement date and alongside the new Gas Plant.

Days before the TVA Board of Directors were scheduled to meet on February 11, 2026, as construction of the new Gas Plant was nearing completion, TVA published a supplemental environmental impact statement identifying its new "preferred alternative" plan for the Cumberland site: continued operation of the Coal Plant *and* construction and operation of the new Gas Plant.[40] In addition, on February 11, 2026, the TVA Board passed a resolution authorizing TVA to continue operating the Coal Plant together with the new Gas Plant and directing TVA staff "to apply for any permits that may be applicable" in order "to operate [the Cumberland Coal Plant], along with [the Cumberland Gas Plant], beyond its currently scheduled retirement dates."[41]

To comply with the Board's resolution, TVA identified several life-extending modifications required to continue operating the Cumberland Coal Plant beyond its 2028 retirement date.[42] The Coal Plant requires major renovations to some of its most essential components, such as the steam turbine, various internal parts, and the scrubbers that help to control emissions; replacement of one or more feedwater heaters, air preheater basket, and

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4, Fuel Burning Non-Process Equipment); *id.*, app. E at 40 (APC Form 5, Stationary Gas Turbine or Internal Combustion Engine); *id.*, app. E at 58 (APC 4, Fuel Burning Non-Process Equipment).

[37] TDEC Permit No. 981885 Summary, attach. 1 at 1–2.

[38] Video posted by TVA, Facebook (Apr. 14, 2025), https://www.facebook.com/TVA/videos/check-out-the-view-of-the-ongoing-construction-of-the-new-1450-megawatt-cumberla/2637843213073175/ (depicting "the ongoing construction of the new 1,450-megawatt Cumberland Combined Cycle Plant in Middle Tennessee").

[39] Lee Erwin, *TVA on Track Building New Cumberland Natural Gas Power Plant Southeast of Clarksville*, Clarksville Now (July 22, 2025), https://perma.cc/N46Q-CJLB.

[40] TVA, Continued Operation of the Cumberland Fossil Plant: Final Supplemental Environmental Impact Statement at i–ii, vii (Feb. 2026), https://perma.cc/QLN8-TVSK ("TVA Cumberland SEIS").

[41] TVA Bd. of Dirs., Board Resolution (Cumberland Fossil Plant Continued Operation) at 3 (Feb. 11, 2026), https://perma.cc/QPS3-ERGA ("TVA Board Resolution").

[42] TVA Cumberland SEIS at 10.

cooling water system; and upgrades to the Coal Plant's central automation system and emissions monitoring system.[43]

The Cumberland Coal Plant has faced operational challenges in recent years.[44] TVA has estimated that "[t]he total investment needed to continue to operate [the Cumberland Coal Plant], maintain historical performance, and comply with regulatory requirements is expected to be $738 million."[45] Work to perform the renovations will require outages lasting approximately three months at a time, to be completed over the next three to four years.[46] In early June 2026, the U.S. Department of Energy announced its decision to provide more than $46 million to help TVA "restore reliability, enhance efficiency, and extend the operational life of the coal-fired assets" at Cumberland—the third-highest amount of federal funding granted among twelve coal-extension projects announced by the administration, but only six percent of the life-extension projects' estimated cost.[47]

At the time TVA announced its new preferred alternative of operating the Cumberland Coal Plant beyond its 2028 retirement date, TVA confirmed that construction of the Gas Plant was ongoing.[48] TVA also expressly recognized the new Gas Plant could no longer rely on the net difference in emissions between the two plants to evade major New Source Review and submitted a partial application for a PSD permit in May 2026.[49] Despite submitting that application for a "preconstruction" permit, TVA did not pause construction—or operation—of the new Gas Plant.[50] Rather, after deciding not to retire the Cumberland Coal Plant as previously

[43] *Id.*

[44] *See, e.g.*, Notice of Intent, 86 Fed. Reg. at 25934 (noting that "frequent cycling of the large super-critical units, a recent change in the method of plant operation for which the plant was not originally designed, presents reliability challenges that are difficult to anticipate and very expensive to mitigate"); TVA, Aging Coal Fleet Evaluation at 10–12 (May 2021), https://perma.cc/C6N5-BM2M (describing the Coal Plant's "silo failure" as "symptomatic of age-driven material condition issues that are difficult to proactively address" and listing other challenges such as the plant's "[u]nplanned outage rage, a component of availability" and "lack of flexibility").

[45] **Attachment 2**, TVA, Cumberland System Value Analysis – Attachment A at 162 (Jan. 29, 2026), https://perma.cc/YM9J-Z4UB ("Cumberland System Value Analysis").

[46] TVA Cumberland SEIS at 85.

[47] *Compare Defense Production Act Title III Project Selections*, U.S. Dep't of Energy, https://perma.cc/JCH8-XVW4 ($46 million), *with* **Attachment 2**, Cumberland System Value Analysis at 162 (estimating $738 million in investments).

[48] TVA Cumberland SEIS at i, 1, 48 n.1, 53.

[49] *Id.* at vi, 48; *see* 2026 PSD Permit Application.

[50] *Cumberland Charges Ahead with Back-to-Back Milestones*, TVA (June 4, 2026), https://perma.cc/ZJP9-WE2F.

promised TVA completed construction of the Gas Plant and fired up both of the new gas turbines without the requisite PSD permit.[51]

D. TVA applied for a PSD permit for the Cumberland Gas Plant after construction was already substantially underway.

The February 2026 TVA Board Resolution and supplemental environmental impact statement acknowledged the need for a new permit for the Gas Plant in light of the new plan to continue operating the Coal Plant, while also noting that the Gas Plant's construction was already underway.[52] Weeks after the Board's decision, TVA posted a video on social media documenting that the Cumberland Gas Plant was "under construction."[53]

On March 12, 2026, TDEC staff publicly posted a draft PSD modeling protocol for a proposed project at TVA's Cumberland Reservation to "keep the existing [Coal Plant] operational" while keeping "[t]he scope of the [Gas Plant] project . . . mostly unchanged."[54]

On March 25, 2026, TVA submitted a monitoring plan to TDEC for the new gas turbines' continuous emissions monitoring system, which listed tentative dates for commencing "commercial operation" of the new turbines in "[b]ypass" mode: April 16 for the first turbine, and May 15 for the second turbine.[55] Emission rates for nitrogen oxides (NO_X), carbon monoxide (CO), volatile organic compounds (VOC), and formaldehyde are higher when the turbines operate in simple-cycle or "bypass" mode, as the exhaust is routed through the "bypass stack" instead of the heat recovery steam generator—which contains the selective catalytic reduction system and catalytic oxidizer—thus bypassing those add-on pollution controls.[56]

In the required notification forms that TVA submitted to TDEC in April and May 2026, TVA certified "under penalty of perjury" that the "[d]ate of startup" for one new turbine (Source No. 55) was April 28, 2026,[57] and the "[d]ate[s] of startup" for two new fuel heaters and one new

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[51] *See id.*

[52] TVA Cumberland SEIS at vi, 1, 28, 48–50, 76; TVA Board Resolution at 2.

[53] Video posted by TVA (@TVAnews), X.com, *Big progress is happening in Middle Tennessee!* (Mar. 23, 2026), https://perma.cc/KP59-FRLU.

[54] Justin Fickas et al., Trinity Consultants, Modeling Protocol: Tennessee Valley Authority / Cumberland Combustion Turbine Plant at 1-1 (Mar. 2026), https://perma.cc/C3ZK-6FAM ("Cumberland Gas Plant Modeling Protocol").

[55] Letter from Allen A. Clare, TVA, to Michelle Walker Owenby, TDEC (Mar. 25, 2026) https://perma.cc/9VE7-N28S.

[56] *See* 2022 Minor NSR Permit Application at 2-1 to 2-2, 3-4, A-15.

[57] Appendix 4: Startup Certification (Apr. 28, 2026), https://perma.cc/88ZC-JJU6 (certifying startup for one combined-cycle unit, Source No. 55).

gas-fired boiler (Source Nos. 60, 61, and 57) were April 21, April 23, and May 7, 2026, respectively.[58]

After this start-up activity began, on May 20, 2026, a consulting firm submitted a "PSD Permit Application" on TVA's behalf for the Cumberland Gas Plant.[59] The application requested "the issuance of a PSD permit" for the same emissions units described in TVA's minor NSR permit application and in its minor NSR permit.[60] The PSD Application refers to those units (the combined-cycle units, fuel heaters, gas-fired boilers, emergency fire pump, and cooling tower) as "New."[61] But notably, the PSD Application also discloses that the installation of many of those units occurred in "2024–2025."[62]

TVA's application acknowledges that a PSD permit is required for those units,[63] stating that TVA's own "calculations indicate that the proposed [Gas Plant] project will require a PSD permit for a major modification to an existing stationary source" due to significant net emissions increases above the applicable thresholds for CO, NO_X, VOC, filterable particulate matter (PM), total coarse particulate matter (PM_{10}), total fine particulate matter ($PM_{2.5}$), VOC, and carbon dioxide equivalents (CO_2e).[64]

The application does *not* request PSD review of the life-extending modifications of the Cumberland Coal Plant. Instead, the application states that the coal units "are not included in the PSD applicability analysis" because they are "not being modified as part of the project."[65] Further, the application states that TVA plans to "undertake[] the analyses required to determine whether [specific activities at the coal units] constitute 'routine' maintenance, repair, or

[58] Appendix 4: Startup Certification (Apr. 30, 2026), https://perma.cc/K5KM-FKAE (certifying startup for one dewpoint gas heater, Source No. 60); Appendix 4: Startup Certification (Apr. 30, 2026), https://perma.cc/2T45-WWLY (certifying startup for one dewpoint gas heater, Source No. 61); Appendix 4: Startup Certification (May 7, 2026), https://perma.cc/RZ5C-TS6K (certifying startup for one gas-fired auxiliary boiler, Source No. 57).

[59] *See generally* 2026 PSD Permit Application.

[60] *Id.* at 1-1 to 1-2 (listing the following emission units and citing Permit No. 981885 as the source of their "[n]umbering convention": two fuel oil-fired boilers (Source No. 17); two gas-fired combined-cycle units (Source Nos. 55–56); two gas-fired boilers (Source Nos. 57–58); one diesel-fired emergency fire pump engine (Source No. 59); three dewpoint gas heaters (Source Nos. 60–62); and one cooling tower (Source No. 63)).

[61] *Id.*, app. B at tbl.B-8 & n.1.

[62] *Id.*, app. E at 10–11, 14–15, 24–25, 27–28, 32, 40, 58.

[63] *Id.* at 1-1, 3-1.

[64] *Id.* at 1-1.

[65] *Id.* at 3-1.

replacement . . . and what activities should be aggregated as a 'project' for purposes of these analyses."[66]

After submitting the application to TDEC, TVA notified EPA that it had (1) "commenced commercial operation" of the first new turbine on May 29, 2026,[67] and (2) "commenced operation" of the second new turbine on May 31, 2026.[68] These notifications specified that both turbines' emissions were "released to the atmosphere . . . through the bypass."[69]

On June 8, 2026, TVA submitted another required notification form to TDEC, certifying "under penalty of perjury" that the "[d]ate of startup" for the second new turbine (Source No. 56) occurred on May 31, 2026.[70] And on June 17, 2026, TVA notified EPA that it had "commenced commercial operation" of the second new turbine on June 14, 2026.[71]

As of the date of this notice letter, TDEC has not published any notification forms certifying the startup date(s) for the second new gas-fired auxiliary boiler (Source No. 58), the new diesel-fired emergency fire pump engine (Source No. 59), the third new dewpoint gas heater (Source No. 62), or the new cooling tower (Source No. 63).

By letter dated June 18, 2026, TDEC notified TVA that it had determined the PSD permit application was "incomplete."[72] TDEC's letter listed nine categories of information needed to complete the application, including Tier I and Tier II air quality modeling reports, supporting documentation for TVA's emission calculations and proposed emission limits, and information about the Coal Plant renovations.[73] TVA must submit this additional information within 180 days of its receipt of TDEC's letter.[74]

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[66] *Id.*

[67] Letter from Allen A. Clare, TVA Designated Representative, to Bryan Ramirez, EPA, at 1 (May 29, 2026), https://perma.cc/M2QK-D99K.

[68] Letter from Allen A. Clare, TVA Designated Representative, to Bryan Ramirez, EPA, at 1 (June 1, 2026), https://perma.cc/7AQC-NMR9.

[69] Letter from Allen A. Clare, TVA Designated Representative, to Bryan Ramirez, EPA, at 1 (May 29, 2026), https://perma.cc/M2QK-D99K; Letter from Allen A. Clare, TVA Designated Representative, to Bryan Ramirez, EPA, at 1 (June 1, 2026), https://perma.cc/7AQC-NMR9.

[70] Appendix 4: Startup Certification (June 8, 2026) (certifying startup for one combined-cycle gas turbine, Source No. 56), https://perma.cc/UZ4F-P56F.

[71] Letter from Allen A. Clare, TVA Designated Representative, to Bryan Ramirez, EPA, at 1 (June 17, 2026), https://perma.cc/FB6M-YSVN.

[72] Letter from James P. Johnston, TDEC Div. of Air Pollution Control, to Darren Crutcher, Plant Manager, TVA Cumberland Fossil Plant, at 1 (June 18, 2026), https://perma.cc/RUW3-MTQR.

[73] *Id.* at 1–3.

[74] *Id.* at 3.

Notably, TDEC's June 18 letter deeming the PSD application incomplete states: "Please be advised that construction or modification of the source cannot begin until you are in receipt of the issued construction/modification permit."[75] It also states: "It is the express intent of the Tennessee Air Pollution Control Board that the 180-day permit application correction period is not to be construed by an applicant as permission to construct or modify a source without the permit required by Division Rules."[76]

E. The Cumberland Gas and Coal Plants emit significant amounts of harmful pollutants that pose a threat to public health.

The Cumberland Coal Plant is an existing major stationary source of air pollution at TVA's Cumberland Reservation. In 2025 alone, the Cumberland Coal Plant emitted 5,209 short tons of sulfur dioxide (SO_2), 4,065 short tons of NO_X, and a total of more than 10.2 million short tons of CO_2e.[77] In addition to these emissions, the Cumberland Coal Plant emits PM; VOC; CO; and hazardous air pollutants including mercury, arsenic, chromium, lead, manganese, and nickel; all of which adversely impact air quality and pose a risk to public health.[78] The Cumberland Gas Plant emits many of the same pollutants: CO, NO_X, PM, and VOC, as well as added hazardous air pollutants such as formaldehyde.[79]

Although the Cumberland Gas Plant's minor NSR permit contains limits purporting to avoid PSD during the supposedly brief period of time between startup of the gas turbines and shutdown of the coal boilers,[80] that limit was devised under the assumption that the coal units would retire no later than the end of 2028.[81] This assumption is no longer true; since at least February 11, 2026, if not earlier, TVA has planned to indefinitely operate the Coal and Gas Plants simultaneously. Indeed, as evidenced by the fact that TVA has submitted a PSD application for the Gas Plant, TVA no longer intends to avoid PSD. Accordingly, the PSD avoidance limits in

[75] *Id.* at 1.

[76] *Id.* at 3.

[77] **Attachment 3** (displaying data queried from EPA's Clean Air Markets Program Data, *see Clean Air Markets Program Data*, EPA, https://campd.epa.gov/data/custom-data-download (last visited June 24, 2026)).

[78] *See* Title V Permit Renewal Application at 3-17, 3-38 to 3-39.

[79] Cumberland Gas Plant Modeling Protocol at 1-1 to 1-2, 3-7 tbl.3-1.

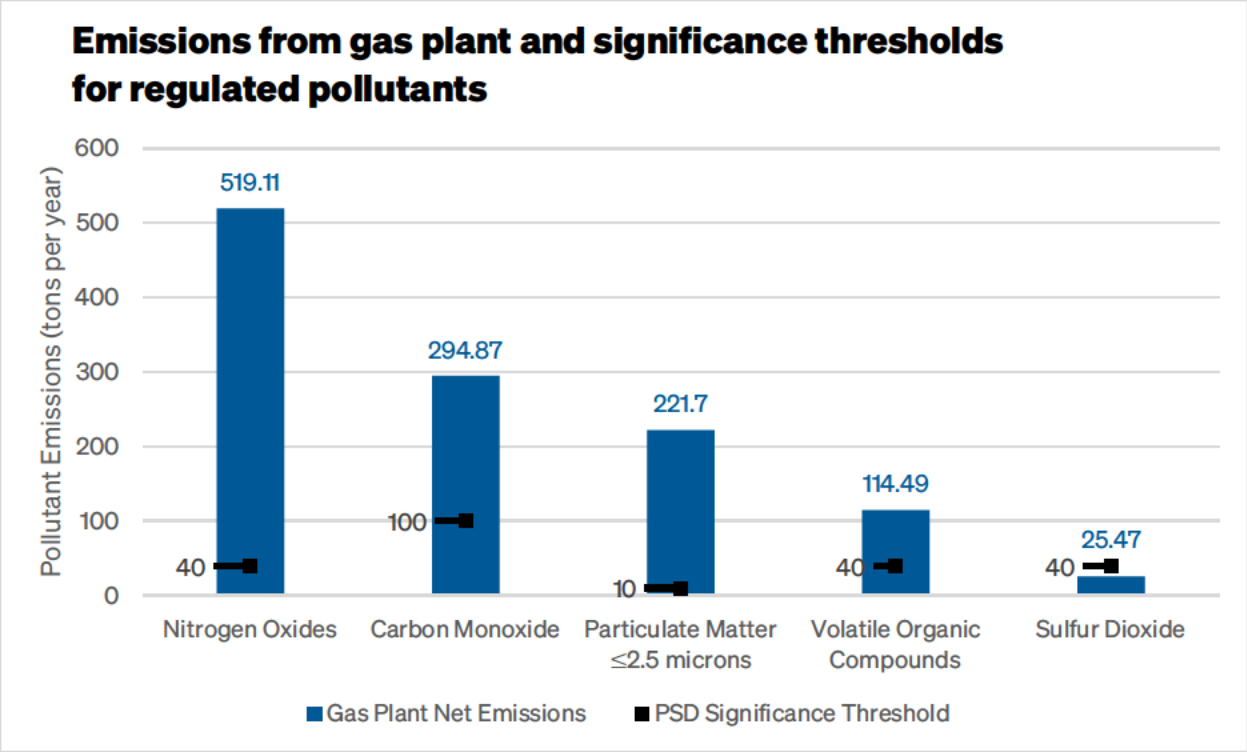
[80] Minor NSR Permit No. 981885 at 6, 11–12, 37 (Conditions G13, S1-4, and S3-3).

[81] TDEC Permit No. 981885 Summary at 1 ("This project encompasses the construction of the following: two natural gas-fired combined cycle combustion turbine units, two natural gas-fired auxiliary boilers, three natural gas-fired gas heaters, one emergency engine, one cooling tower, and the subsequent decommissioning of two existing coal-fired boilers.").

TVA's minor NSR permit are invalid, and TVA cannot rely on them to construct and operate the Gas Plant as a "minor" modification.[82]

Emission estimates for the Cumberland Gas Plant demonstrate that its emissions for all but one of the criteria pollutants will exceed the applicable thresholds for a major modification subject to PSD review[83]:

FIGURE 1: NET EMISSIONS INCREASES, TVA CUMBERLAND GAS PLANT[84]



Now that TVA has decided to keep the Coal Plant operating alongside the new Gas Plant, total emissions from TVA operations at the Cumberland Reservation will be far higher than the representations TVA made when it received minor source Permit No. 981885.

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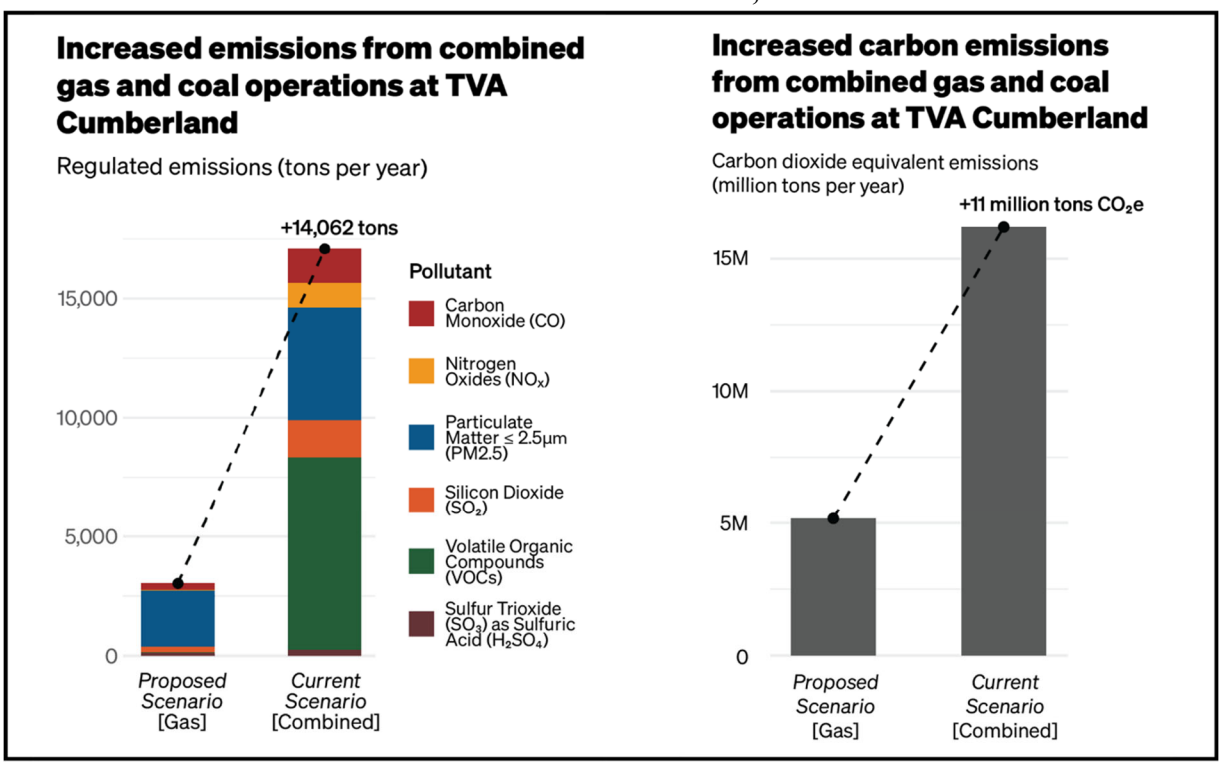
[82] When a facility obtains a minor NSR permit "with an intent to construct, and possibly begin operation of, a major new source or major modification without first obtaining a PSD or nonattainment permit," that source is deemed "to have been major ab initio." 54 Fed. Reg. 27,274, 27,280 (June 28, 1989). As a result, the minor NSR permit is considered "not 'federally enforceable' from the time construction begins on the new source or modification in question," and the source's potential emissions are treated "as not being limited by the restrictions in the original permit." *Id.*

[83] Cumberland Gas Plant Modeling Protocol at 1-1 to 1-2, 3-7 tbl.3-1.

[84] Emissions are based on TVA's 2026 estimate of the Gas Plant's potential emissions. 2026 PSD Permit Application at 3-11 tbl.3-5.

The kinds of air pollutants emitted by both the Cumberland Coal and Gas Plants have serious adverse effects on local air quality and human health. Both short- and long-term exposures to pollutants such as NO_X, PM, CO, and SO_2 have been linked to a range of adverse health outcomes.[85] In addition, NO_X and VOC react with heat and sunlight to form ground-level ozone, adding yet another source of local air pollution linked to negative public health outcomes.[86]

FIGURE 2: POTENTIAL EMISSIONS CHANGES, TVA CUMBERLAND SITE[87]



[85] *See* Xia Meng et al., *Short Term Associations of Ambient Nitrogen Dioxide with Daily Total, Cardiovascular, and Respiratory Mortality: Multilocation Analysis in 398 Cities*, 372 BMJ 1, 4–5, 7 (2021); Jingchun Fan et al., *The Impact of PM2.5 on Asthma Emergency Department Visits: A Systematic Review and Meta-Analysis*, 23 Env't Sci. Pollution Rsch. 843, 843–44 (2015); Francesca Dominici et al., *Fine Particulate Air Pollution and Hospital Admission for Cardiovascular and Respiratory Diseases*, 295 J. Am. Med. Ass'n 1127, 1133 (2006); Review of National Ambient Air Quality Standards for Carbon Monoxide Final Rule, 76 Fed. Reg. 54294, 54298–99 (Aug. 31, 2011); Review of the Primary National Ambient Air Quality Standards for Sulfur Oxides Final Action, 84 Fed. Reg. 9866, 9874–76 (Mar. 18, 2019).

[86] Review of the Ozone National Ambient Air Quality Standards Final Action, 85 Fed. Reg. 87256, 87268–72 (Dec. 31, 2020).

[87] Libbie Weimer, S. Env't L. Ctr. (2026). Emissions for "Proposed Scenario [Gas]" are based on TVA's 2024 estimate of the Gas Plant's potential emissions. 2024 Minor NSR Permit Application

II. APPLICABLE CLEAN AIR ACT REQUIREMENTS

The Clean Air Act is a broad remedial statute designed to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population."[88] The Clean Air Act requires EPA to regulate air pollutants that "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare."[89] These pollutants are referred to as "criteria pollutants," and include nitrogen dioxide (NO_2), fine particulate matter ($PM_{2.5}$), and ozone (O_3); ozone precursors such as NO_X and volatile organic compounds (VOC) are also regulated like criteria pollutants.[90]

EPA must establish National Ambient Air Quality Standards ("NAAQS") to limit concentrations of criteria pollutants to levels "requisite to protect the public health."[91] Each state, in turn, is required to develop a State Implementation Plan ("SIP") setting forth how the NAAQS will be achieved and maintained within the state.[92] SIPs must be submitted to, and approved by, the EPA.[93] Through SIPs, state agencies are responsible for ensuring compliance with federal air quality standards.[94] Once approved by EPA, a SIP is federally enforceable under the Clean Air Act.[95] EPA has approved Tennessee's SIP,[96] and the EPA-approved sections of the SIP and the Clean Air Act are federally enforceable law governing air pollution sources in the state.

A. A major modification to an existing major stationary source must comply with the Clean Air Act's major New Source Review requirements.

The Clean Air Act's implementing regulations distinguish between "minor" and "major" sources of air pollution. A "major" source is one that "emits, or has the potential to emit" regulated pollutants at a rate equal to or higher than a specified threshold.[97] For new fossil-fuel fired steam electric plants with more than 250 MMBtu/hr heat input, that threshold is 100 tons

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at 3-1 tbl.3-1. Emissions for "Current Scenario [Combined]" are based on TVA's 2024 calculation of the Coal Plant's baseline emissions and TVA's 2026 estimate of the Gas Plant's potential emissions. *Id.*; 2026 PSD Permit Application at 3-11 tbl.3-5.

[88] 42 U.S.C. § 7401(b)(1).

[89] *Id.* § 7408(a)(1)(A).

[90] 40 C.F.R. § 50.4–.21.

[91] 42 U.S.C. § 7409(b)(1).

[92] *Id.* § 7407(a). In some areas, not at issue here, the local jurisdiction adopts and submits to EPA a Local Implementation Plan rather than a SIP.

[93] *Id.* § 7410.

[94] *Id.* §§ 7410(a)(2)(A), 7502(c)(6).

[95] *Id.* §§ 7413, 7604.

[96] *See* 40 C.F.R. § 52.2220(c) tbl.1.

[97] 40 C.F.R. § 51.166(b)(1)(i)(A); *see also* Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)1.

per year of any regulated NSR pollutant.[98] For existing major sources such as the Cumberland Coal Plant, major NSR is required for any modification of the source that would result in a net emissions increase of a regulated pollutant above specified thresholds that are lower than those applicable to a new source. For example, the "major modification" threshold for NO_X is forty tons per year, and the threshold for $PM_{2.5}$ is ten tons per year.[99]

For new major sources and major modifications of existing major sources, the Clean Air Act and Tennessee's SIP require compliance with the major New Source Review program. This program generally prohibits the construction or expansion of a major source of air pollution without first obtaining a preconstruction permit, performing a robust analysis of the impacts on air quality, and applying the best available pollution controls.[100]

Major NSR has two sets of permitting requirements: (1) Prevention of Significant Deterioration ("PSD") for emissions of a pollutant in an area that is attaining the federal air quality standard for that pollutant, and (2) Nonattainment NSR for emissions of a pollutant in an area that is not attaining the federal air quality standard for that pollutant.[101] Stewart County is currently in attainment for all applicable NAAQS, meaning PSD applies to every criteria pollutant for which there will be a significant net emissions increase.

1. <u>The New Source Review program requires a Prevention of Significant Deterioration permit before beginning construction of a major modification to an emitting facility</u>.

Under the Clean Air Act and Tennessee's SIP, a PSD permit is required before beginning actual construction on a "major modification" to an existing major source.[102] In addition, "under

[98] *Id.* § 51.166(b)(1)(i); *see also* 42 U.S.C. § 7479(1); Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)1.(i)(I). A major source for NO_X is also "considered major for ozone." Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)3.(i).

[99] 40 C.F.R. § 51.166(b)(23)(i); Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)24.(i).

[100] 42 U.S.C. § 7475; *see also* 42 U.S.C. § 7410 (providing that states implement New Source Review through their SIPs).

[101] Federal air quality standards, which are required under the Clean Air Act, are set by the EPA and known as national ambient air quality standards ("NAAQS"). 42 U.S.C. §§ 7408(a)(1)(A); 7409(a)(1)(A). The Act directs the EPA Administrator to develop both primary and secondary NAAQS. *Id.* § 7409(b). Primary NAAQS represent the EPA Administrator's judgment of air quality levels "necessary, with an adequate margin of safety, to protect the public health," 40 C.F.R. § 50.2(b), whereas secondary NAAQS are set at the level "requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air," 42 U.S.C. § 7409(b)(2). The EPA sets primary and secondary NAAQS for each criteria pollutant designated under the Act. 42 U.S.C. §§ 7408(a)(1)(A), 7409(b).

[102] 42 U.S.C. § 7475(a)(1); Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(a)1., (4)(c)3.

the Tennessee SIP, the obligation to obtain an appropriate permit is ongoing, and applies even to those sources that did not obtain the appropriate permits before construction."[103]

A major modification is a "physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase" of a regulated pollutant and a "significant net emissions increase of that pollutant."[104] To "begin actual construction" of such a modification generally means "initiation of physical on-site construction activities on an emissions unit which are of a permanent nature," including "installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures."[105]

Determining whether a proposed change at a source will be a "major modification" requiring a PSD permit is a two-step process. At Step One, the analysis looks at whether the project itself would result in a "significant emissions increase" of a regulated pollutant.[106] Increases in pollution are considered "significant" for this purpose if they exceed certain *de minimis* levels, specified by federal regulation, in tons per year for each pollutant.[107]

If so, then the analysis turns to Step Two: whether the change would result in a "significant *net* emissions increase of the pollutant."[108] A "net emissions increase" is calculated by combining the amount of emissions increased by the project with "any other increases and decreases" that are "creditable"—that is, all source-wide changes in emissions that are "contemporaneous with the particular change" and meet other requirements.[109] A "contemporaneous" increase or decrease is one that occurs between "[t]he date five years before a completed application for the particular change is submitted" and "[t]he date that the increase from the particular change occurs."[110]

An existing major source that was originally constructed prior to Congress' creation of the PSD program (applicable to new major sources on which construction commenced after August 7, 1977), such as the Cumberland Coal Plant, nonetheless must undergo PSD review if component redesigns or other renovations "render[] a plant more reliable and less susceptible to future shutdowns," since those changes mean "'the plant will be able to run consistently for a

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[103] *Nat'l Parks Conservation Ass'n v. TVA*, 480 F.3d 410, 419 (6th Cir. 2007) (citing Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(e)).

[104] Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)2.

[105] *Id.* at 1200-03-09-.01(4)(b)12.

[106] 42 U.S.C. § 7411(a)(4); Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(a)2., (4)(b)49. (defining "project").

[107] 40 C.F.R. § 52.21(b)(23) (current significance levels, mostly 10–40 tons per year); Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)24.(i).

[108] Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(a)2.

[109] *Id.* at 1200-03-09-.01(4)(b)4.(i).

[110] *Id.* at 1200-03-09-.01(4)(b)4.(ii)(I)–(II).

longer period of time,' burning more coal and emitting more pollution."[111] Renovations that increase actual emissions above a specified threshold "trigger a utility's obligation to conduct PSD review, secure the appropriate permits, and install required pollution controls."[112]

There is a narrow exemption in the PSD rules for physical changes that constitute routine maintenance, repair, and replacement.[113] That exemption "is generally limited to *de minimis* circumstances."[114] To determine whether a source has met its burden[115] to demonstrate that a particular change is "routine"—and therefore not a "physical change" subject to the two-step PSD applicability analysis—courts look to the "nature, extent, purpose, frequency, and cost of the work, as well as other relevant factors."[116] Physical changes that are "large in scope," expensive, undertaken by outside contractors, and funded using a capital improvements budget are not "routine,"[117] nor are projects intended to increase the operational life and reliability of units or those that occur infrequently in a unit's expected life cycle.[118]

Under state law, changes to an existing major source that the operator claims are not "modifications" must still be reported to the TDEC.[119]

2. A PSD Permit for a major modification requires application of the best available pollution controls.

The PSD provisions of the Clean Air Act and Tennessee's SIP, including those for "major modifications" to an existing major source, require the application of emission limits that reflect the maximum degree of reduction achievable for the facility through the use of pollution control

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[111] *United States v. Ameren Mo.*, 229 F. Supp. 3d 906, 915 (E.D. Mo. 2017) (quoting *United States v. Ala. Power Co.*, 730 F.3d 1278, 1281 (11th Cir. 2013), *aff'd in part*, 9 F. 4th 989 (8th Cir. 2021).

[112] *Id.*

[113] Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)2.(i)(I).

[114] *Ameren Mo.*, 229 F. Supp. 3d at 999 (quoting *United States v. Ameren Mo.*, No. 11-CV-77, 2016 WL 728234, at *5 (E.D. Mo. Feb. 24, 2016)).

[115] *See Nat'l Parks Conservation Ass'n v. TVA*, 618 F. Supp. 2d 815, 823 (E.D. Tenn. 2009) ("Generally, the party claiming the benefits of an exception to the prohibition of a statute has the burden of proof . . . . After careful consideration, the Court agrees with the district courts who have followed the general rule that the burden of proof is on the party seeking the benefit of the [routine maintenance, repair and replacement] exclusion as an exception.").

[116] *Wisc. Elec. Power Co. v. Reilly*, 893 F.2d 901, 910 (7th Cir. 1990); *see also, e.g.*, *United States v. Ohio Edison Co.*, 276 F. Supp. 2d 829, 850, 858–62 (S.D. Ohio 2003); *United States v. Cinergy Corp.*, 495 F. Supp. 2d 909, 930–31 (S.D. Ind. 2007).

[117] *Ohio Edison Co.*, 276 F. Supp. 2d at 834; *accord Ameren Mo.*, 229 F. Supp. 3d at 1001–02, 1003.

[118] *Ohio Edison Co.*, 276 F. Supp. 2d at 835, 838–39, 855.

[119] Tenn. Comp. R. & Regs. 1200-03-02-.01(aa)4.; *id.* at 1200-03-09-.01(1)(a) (2013).

technologies and other methods.[120] This standard is known as Best Available Control Technology ("BACT"). The application of BACT limits is required for "each proposed emissions unit at which a net emissions increase in the pollutant would occur."[121] In addition, under Tennessee's SIP, "the duty to obtain a construction permit containing the proper emissions limits is ongoing, even *post*-construction."[122]

The Clean Air Act defines BACT as "an emission limitation based on the maximum degree of reduction of each pollutant . . . which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility."[123] BACT emission limitations must apply "on a continuous basis" during the operation of a source.[124]

Tennessee's SIP requires the owner or operator of a proposed major modification to include in its permit application "[a] detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology (BACT) would be applied where required by this paragraph."[125] BACT is required at the emissions-unit level, for each criteria pollutant subject to PSD.[126] For a major modification, BACT must be applied to every emissions unit undergoing a physical or operational change that results in any net emissions increase of a pollutant subject to PSD.[127] Facility operators may be required to study

[120] 42 U.S.C. § 7475(a)(4) (prohibiting construction of a major emitting facility unless it is subject to BACT, among other requirements); *see also* Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(c)3. (prohibiting construction of a major modification without a permit that establishes applicable requirements limits); *id.* at 1200-03-09-.01(4)(j)3. (2013) (requiring application of BACT to major modifications).

[121] Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(j)3. (2013).

[122] *Nat'l Parks Conservation Ass'n*, 480 F.3d at 419 (citing Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(e)); *see also id.* (describing failure to apply BACT as "actionable . . . each new day a plant operates without BACT limits on emissions" (citing Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(j)).

[123] 42 U.S.C. § 7479(3); *see* Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(b)53.

[124] 42 U.S.C. § 7602(k) (defining "emission limitation"); *see, e.g.*, *Nat'l Parks Conservation Ass'n*, 480 F.3d at 419.

[125] Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(e)2.(i)(III).

[126] *Id.* at 1200-03-09-.01(4)(j)3. (2013); *id.* at 1200-03-09-.01(4)(b)53.

[127] *Id.* at 1200-03-09-.01(4)(j)3. (2013).

and install multiple pollution control technologies to minimize different pollutant emissions from a single unit.[128]

3. A PSD Permit for a major modification requires preconstruction analysis of potential impacts on air quality to ensure NAAQS attainment and maintenance.

The proponent of a new major source or major modification must perform a "source impact analysis" to demonstrate that construction and operation of the new or modified source "would not cause or contribute to" an exceedance of any ambient air quality standard or otherwise significantly deteriorate ambient air quality.[129] The source impact analysis, which typically must involve robust air dispersion modeling, enables the permitting agency to evaluate whether a source's emissions will result in—or exacerbate—unhealthy air quality.[130] That preconstruction analysis must take into account existing pollution levels based on "continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the [NAAQS]."[131]

If the source impact analysis demonstrates the project will cause or contribute to a NAAQS exceedance, then the permittee must revise its project as needed to ensure NAAQS compliance, or the permitting agency must deny the application.[132]

The PSD preconstruction review process also includes an assessment of visibility impacts on nearby national parks, wilderness areas, and other specially protected areas.[133] This assessment must be subject to consultation with federal agencies responsible for managing and protecting such areas. If a federal agency finds that the project's emissions will cause an "adverse impact" on visibility in such an area, the project cannot be permitted.[134]

Permitting agencies must ensure that proposed projects undergo these air quality analyses as part of the *preconstruction* review, following processes, methodological standards, and guidelines for analysis set at the federal level.[135] These analyses take place preapplication for

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[128] *See* Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(j)3. (2013) (requiring a major modification to apply BACT "for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source" and specifying that "[t]his requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit").

[129] *Id.* at 1200-03-09-.01(4)(e)1.(i)–(ii); *accord* 42 U.S.C. § 7475(a)(3)(B), (e)(1), (e)(3)(B); 40 C.F.R. § 51.166(k), (m).

[130] *See* Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(e), (4)(k).

[131] *Id.* at 1200-03-09-.01(4)(e)7.(ii).

[132] *See id.* at 1200-03-09-.01(1)(e)–(f).

[133] Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(n); *see* 42 U.S.C. § 7475(d)(2).

[134] Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(n)2.; *see* 42 U.S.C. § 7475(d)(2)(C)(ii).

[135] Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(f), (4)(k); 40 C.F.R. § 51.166(*l*)–(m).

each pollutant subject to PSD review. Like the requirement to evaluate and install pollution controls as needed to comply with BACT emission limits, these source impact analysis requirements serve as substantive safeguards effectuating the purpose of the Clean Air Act's PSD program: to protect public health and welfare against the adverse impacts of air pollution.[136]

B. The Clean Air Act prohibits "sham" permitting, or construction of a major new source or modification pursuant to a minor NSR permit with intent to operate as a major new source or modification.

PSD requirements plainly apply *before* construction begins, and federal and state law prohibit any attempts to undergo a sham process in which a permittee constructs (or begins to construct) a purported minor source or minor modification with the intent to operate as a major source or major modification.[137] Tennessee's SIP explicitly prohibits "circumvention" of applicable requirements through methods such as "stagger[ing] installation and operation of a facility to avoid coverage by a standard that applies only to operations larger than a specified size."[138]

Although sources may rely on enforceable operational limits to remain under major source thresholds, those limits are only valid if they reflect the project at hand. According to EPA, the Clean Air Act prohibits "construct[ion] [of] a source or major modification with a minor source permit when there is intent to operate as a major source or major modification."[139] And "[p]ermits with conditions that do not reflect a source's planned mode of operation are void ab initio and cannot act to shield a source from the requirement to undergo preconstruction review."[140] As a result, a source constructed pursuant to a minor NSR permit on the basis of

[136] *See* 42 U.S.C. § 7470(1); Tenn. Comp. R. & Regs. 1200-03-09-.01(c).

[137] Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans, 54 Fed. Reg. 27274, 27280–81 (June 28, 1989).

[138] Tenn. Comp. R. & Regs. 1200-03-09-.03(2).

[139] Memorandum from John B. Rasnic, Off. of Air Quality Planning & Standards, EPA, to George T. Czerniak, Region V Chief, EPA, at 2 (June 17, 1993), https://perma.cc/TLQ6-SVKZ ("3M-Maplewood Memo"); *see also* Requirements for Implementation Plans, 54 Fed. Reg. at 27281 (describing EPA's desire "to prevent owners or operators from turning the statutory scheme on its head by using federally enforceable minor source permits in a manner inconsistent with the statute . . ."); Memorandum from Terrell E. Hunt, Off. of Enforcement & Compliance Monitoring, EPA, & John S. Seitz, Off. of Air Quality Planning & Standards, EPA, to Regional Counsels, Regions I–X et al., at 10–15 (June 13, 1989), https://perma.cc/WAX6-5BDS ("EPA Guidance on Limiting Potential to Emit in New Source Permitting") (explaining EPA's agency-wide guidance for enforcement in sham permitting circumstances).

[140] EPA Guidance on Limiting Potential to Emit in New Source Permitting at 12.

operational limits that later becomes a major source or major modification "would have to undergo preconstruction review as though it had never begun construction."[141]

C. Major sources must comply with the terms of operating permits issued under Title V of the Clean Air Act.

Title V of the Clean Air Act[142] requires major sources to obtain operating permits containing "all applicable requirements" and "other conditions as are necessary to assure compliance with" those applicable requirements.[143] The Act provides that "it shall be unlawful for any person to violate any requirement of a [Title V] permit . . . or to operate . . . a major source . . . except in compliance with a [Title V] permit."[144] Similarly, under Tennessee's Title V program, sources must operate "in accordance with the provisions and stipulations set forth in the operating permit."[145]

Under Condition A16 of the Cumberland Coal Plant's current Title V permit, TVA is prohibited from modifying any "air contaminant source which may result in the discharge of air contaminants without first having applied for and received" a permit, whether that modification is major or minor.[146] And modifications not initially expected to cause a significant net emissions increase but that do surpass that threshold are still considered major modifications.[147]

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[141] *In re Issuance of Air Emissions Permit No. 13700345-101 for PolyMet Mining, Inc.* 955 N.W.2d 258, 265 (Minn. 2021) (citing 40 C.F.R. § 52.21(r)(4)).

[142] *See generally* 42 U.S.C. §§ 7661–7661f (comprising Title V).

[143] 42 U.S.C. §§ 7661b(b)(1), 7661c(a); Tenn. Comp. R. & Regs. 1200-03-09-.02(2) (requiring operating permits); Tenn. Comp. R. & Regs. 1200-03-09-.02(11) (detailing major stationary source operating permit requirements).

[144] 42 U.S.C. § 7661a(a); *see also* Tenn. Comp. R. & Regs. 1200-03-09-.02(11)(e)2. (stating that an operating permit under these rules "is a permit issued pursuant to the requirements of title V of the Federal [Clean Air] Act and its implementing Federal regulations").

[145] Tenn. Comp. R. & Regs. 1200-03-09-.02(6); *see id.* at 1200-03-09-.02(11)(c)1.(i) (applying operating permit requirements to "[a]ny major source").

[146] Title V Permit No. 577855 at 5.

[147] *See, e.g.*, *In re Eastman Chemical Co.*, No. APC10-0227, 2010 WL 5658174, at *10 (Tenn. Dep't Env't & Conservation Dec. 16, 2010) (issuing violation order for "modifying a major stationary source" without having first "submit[ted] a timely and complete application for a Title V Operating Permit").

III. VIOLATIONS OF THE CLEAN AIR ACT

A. Claim 1: TVA violated and continues to violate the Clean Air Act and Tennessee's SIP by constructing the Cumberland Gas Plant before obtaining a PSD permit covering the project's significant net emissions increases of seven regulated NSR pollutants.

TVA's construction of the Cumberland Gas Plant (Source Nos. 55–62) constituted a physical change to the Cumberland Fossil Plant, an existing major stationary source, that caused or will cause a significant net emissions increase of CO, NO_X, filterable PM, PM_{10}, $PM_{2.5}$, VOC, and CO_2e. TVA was required to—but did not—comply with all applicable preconstruction permitting requirements, such as performing source impact and BACT analyses, to obtain a PSD permit for those pollutants *prior to* beginning actual construction of the Gas Plant. TVA's failure to obtain a PSD permit before beginning construction of the Cumberland Gas Plant violated Section 165(a)(1) of the Clean Air Act, 42 U.S.C. § 7475(a)(1), and Tennessee Rules 1200-03-09-.01(4)(a)1 and 1200-03-09-.01(4)(c)3, which have been approved by EPA and are part of Tennessee's federally enforceable SIP.[148]

TVA acknowledged in its pending, incomplete PSD permit application that construction of the Cumberland Gas Plant qualifies as a "major modification" because it is a physical change at an existing major source that results in both a significant emissions increase in regulated pollutants and significant *net* emissions increases of those pollutants from the source.[149] Thus TVA was required to complete the required preconstruction monitoring, air dispersion modeling, and BACT analyses to obtain a PSD permit before beginning to construct the Cumberland Gas Plant, and its failure to do so violates Section 165(a)(1) of the Clean Air Act, 42 U.S.C. § 7475(a)(1), and Rules 1200-03-09-.01(4)(a)1 and 1200-03-09-.01(4)(c)3 of the Tennessee SIP. Those violations began on or about August 17, 2024,[150] and recurred each day that actual construction ensued.[151] Construction of four of the new emission units (Source Nos. 58–59, 62–63) is presumed to be ongoing, as TDEC has not yet published any notification forms certifying their startup dates.

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[148] 40 C.F.R. § 52.2220(c) tbl.1; Approval and Promulgation of Implementation Plans; Tennessee: Prevention of Significant Deterioration Regulations, 45 Fed. Reg. 27757, 27757–58 (Apr. 24, 1980) (codified at 40 C.F.R. pt. 52); Tenn. Comp. R. & Regs. 1200-03-09-.01(4).

[149] 2026 PSD Permit Application at 1-1, 3-10, 4-1.

[150] *See* **Attachment 1** (showing satellite images of the site from August 17, 2024, through February 27, 2026); *see also supra* note 36 (listing pages in TVA's pending PSD application that identify the date of "installation" of the new units as "2024-2025").

[151] *See Nat'l Parks Conservation Ass'n*, 480 F.3d at 419 ("[U]nder the Tennessee SIP, the obligation to obtain an appropriate permit is ongoing, and applies even to those sources that did not obtain the appropriate permits before construction[.]").

B. Claim 2: TVA violated and continues to violate Tennessee's SIP by operating the Cumberland Gas Plant without application of emission limits that reflect best available control technology ("BACT").

New major sources and major modifications are required to obtain a PSD permit that, among other requirements, sets stringent emission limitations, or BACT, that the permittee must comply with "on a continuous basis" during all modes of operation of the source.[152] Thus, upon commencing operation, a major source or major modification must continuously comply with all emissions limits that constitute BACT for the facility. In addition, Tennessee's SIP "creates an ongoing obligation to apply BACT, regardless of what terms a preconstruction permit may or may not contain."[153]

TVA's operation of new emission units (Source Nos. 55, 56, 57, 60, and 61) constructed as part of a project at the Cumberland Fossil Plant, an existing major stationary source, that caused or will cause a significant net increase in emissions of seven regulated NSR pollutants (CO, NO_X, filterable PM, PM_{10}, $PM_{2.5}$, VOC, and CO_2e), beginning on or about April 21, 2026,[154] and continuing to present, violates Rules 1200-03-09-.01(1)(e), 1200-03-09-.01(4)(a)5, and 1200-03-09-.01(4)(j)3 of the Tennessee SIP. These violations recur each ensuing day of operation without application of emission limits that reflect BACT.[155]

C. Claim 3: TVA is violating the Clean Air Act and Tennessee's SIP by constructing life-extending modifications to the Cumberland Coal Plant that are part of the same project as construction of the Cumberland Gas Plant without a PSD permit covering the net emissions increases from the modified units.

TVA has announced that it intends to continue operating both coal-fired boilers at the Cumberland Coal Plant beyond their 2028 retirement date. Extending the operational life of the plant requires significant capital investments to substantially repair, replace, renovate, and/or reconfigure various components of the plant.[156] On February 11, 2026, the TVA Board directed TVA staff to move ahead with the investments needed for these modifications.[157] In June 2026,

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[152] 42 U.S.C. § 7602(k).

[153] *Nat'l Parks Conservation Ass'n*, 480 F.3d at 418 (discussing Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(j)3.); *see also id.* at 419 (identifying "the duty to obtain a construction permit containing the proper emissions limits is ongoing, even *post*-construction" (citing Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(e))).

[154] *See* Appendix 4: Startup Certification (Apr. 21, 2026) https://perma.cc/K5KM-FKAE (certifying startup date for one new dewpoint natural gas heater, Source No. 60).

[155] *See Nat'l Parks Conservation Ass'n*, 480 F.3d at 419 (describing "fail[ure] to apply BACT" as "actionable . . . each day a plant operates without BACT limits on emissions").

[156] *E.g.*, TVA Cumberland SEIS at 10; **Attachment 2**, Cumberland System Value Analysis at 162; Record of Decision, 88 Fed. Reg. at 3767.

[157] TVA Board Resolution at 3.

the U.S. Department of Energy awarded TVA more than $46 million in "revitalization" funds to help finance these life-extending modifications at the Cumberland Coal Plant.[158]

TVA estimates that the capital investments needed to finance these substantial renovations to the Cumberland Coal Plant will total over $738 million.[159] The modifications include renovations for the steam turbine and scrubbers; replacement of one or more feedwater heaters, the air preheater basket, and the cooling water system; and upgrades to the Coal Plant's central automation system and emissions monitoring system.[160] And the express purpose of the modifications is to "extend the operational life of the coal-fired assets."[161] These are not routine changes that could qualify for exclusion from the definition of a "modification" under applicable law, nor can they be expected to have a *de minimis* impact on plant emissions.[162]

These physical changes to the Cumberland Coal Plant, and any related changes in the method of the operation of the Cumberland Coal Plant, are part of the same "project" as construction and operation of the Cumberland Gas Plant and are thus part of that major modification of the Cumberland Fossil Plant, an existing major stationary source, requiring review under Tennessee's federally approved PSD regulations for the project's significant net emissions increases of CO, NO_X, filterable PM, PM_{10}, $PM_{2.5}$, VOC, CO_2e, and potentially SO_2. TVA's pending PSD permit application for the Cumberland Gas Plant does not include those changes to the Coal Plant. Thus, TVA is constructing or proposing to construct changes that are part of a major modification requiring PSD review, without complying with applicable preconstruction permitting requirements, including source impact and BACT analyses, or obtaining the required PSD permit.

After a reasonable opportunity for investigation or discovery, evidentiary support is likely to establish that the physical and/or operational changes to TVA's Cumberland Coal Plant to enable its continued operation beyond 2028 are in violation of Section 165(a)(1) of the Clean Air Act, 42 U.S.C. § 7475(a)(1), and Rules 1200-03-09-.01(4)(a)1, 1200-03-09-.01(4)(c)3, and 1200-03-09-.03(2) of Tennessee's SIP, including the prohibition on "circumvention" of applicable

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[158] *Defense Production Act Title III Project Selections*, U.S. Dep't of Energy, https://perma.cc/JCH8-XVW4.

[159] **Attachment 2**, Cumberland System Value Analysis at 162.

[160] TVA Cumberland SEIS at 10.

[161] *Defense Production Act Title III Project Selections*, U.S. Dep't of Energy, https://perma.cc/JCH8-XVW4; **Attachment 4**, TVA, Coal Life Extension: Investment Overview at 1–2 (Dec. 12, 2025), https://perma.cc/97JD-WNBN ("Coal Life Extension Overview") (redactions in version produced in response to request pursuant to Freedom of Information Act).

[162] *See Ohio Edison Co.*, 276 F. Supp. 2d at 888–89 (stating "the general rule that any physical change resulting in an increase in emissions triggers the obligation to comply with the [Clean Air Act]"); *Ameren Mo.*, 229 F. Supp. 3d at 988 (citing power plant's units being "big sources of pollution" and "'baseload' units" as key to establishing that source operator could and should have expected emissions increases to follow improvement projects).

requirements by "stagger[ing] installation and operation of a facility to avoid coverage by a standard that applies only to operations larger than a specified size."[163]

Those violations began when TVA began actual construction of the life-extending modifications to the Coal Plant without a PSD permit covering these changes. Specific dates on which TVA has undertaken the modifications are within the sole possession of TVA at present. However, TVA's pending, incomplete PSD application for the Gas Plant indicates that TVA "proposes to construct" this part of its major modification without the requisite PSD permit within the meaning of Section 304(a)(3) of the Clean Air Act, 42 U.S.C. § 7604(a)(3).

D. Claim 4: TVA is violating the terms of its Title V permit for the Cumberland Fossil Plant by constructing life-extending modifications to the Cumberland Coal Plant without first obtaining a construction permit.

The life-extending changes to the Cumberland Coal Plant constitute a "modification" of an existing major source requiring a preconstruction permit pursuant to Condition A16 of the facility's Title V permit.[164] TVA's plan to extend the operational life of the Cumberland Coal Plant requires significant capital investments to substantially repair, replace, renovate, and/or reconfigure various components.[165] On February 11, 2026, the TVA Board directed TVA staff to move ahead with the investments needed for these modifications.[166] In June 2026, the U.S. Department of Energy awarded TVA more than $46 million in "revitalization" funds to help finance these life-extending modifications at the Cumberland Coal Plant.[167]

TVA estimates that the capital investments needed to finance these substantial renovations to the Cumberland Coal Plant will total over $738 million.[168] The modifications include renovations for the steam turbine and scrubbers; replacement of one or more feedwater heaters, the air preheater basket, and the cooling water system; and upgrades to the Coal Plant's

[163] Tenn. Comp. R. & Regs. 1200-03-09-.03(2), (2)(b).

[164] *See* Title V Permit No. 577855 at 5 (stating that unless a specific exemption applies, "this facility shall not begin the construction of a new air contaminant source or the modification of an air contaminant source which may result in the discharge of air contaminants without first having applied for and received from the Technical Secretary a construction permit for the construction or modification of such air contaminant source" (citing Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(a))).

[165] *E.g.*, TVA Cumberland SEIS at 10; **Attachment 2**, Cumberland System Value Analysis at 162; Record of Decision, 88 Fed. Reg. at 3767.

[166] TVA Board Resolution at 3.

[167] *Defense Production Act Title III Project Selections*, U.S. Dep't of Energy, https://perma.cc/JCH8-XVW4.

[168] **Attachment 2**, Cumberland System Value Analysis at 162.

central automation system and emissions monitoring system.[169] And the express purpose of these modifications is to "extend the operational life of the coal-fired assets."[170]

Because these substantial, life-extending changes are not "routine,"[171] they cannot qualify for exclusion from the definition of a "modification" under Rule 1200-03-02-.01(1)(aa)1 or Rule 1200-03-09-.01(4)(b)2 of the Tennessee SIP. And because these changes will likely increase emissions of regulated NSR pollutants—potentially significantly, thus triggering PSD review—they are subject to Condition A16's prohibition on beginning construction of a modification "without first having applied for and received from the Technical Secretary a construction permit for the construction or modification of such air contaminant source."[172]

After a reasonable opportunity for investigation or discovery, evidentiary support is likely to establish that the physical and/or operational changes to the Cumberland Coal Plant to enable its continued operation beyond 2028 are in violation of Condition A16 of TVA's Title V Operating Permit No. 577855. This Title V permit violation began when TVA began actual construction of the life-extending modifications to the Coal Plant without a construction permit. This information is within the sole possession of TVA at present.

IV. AUTHORITY TO BRING SUIT

Community Groups have authority to bring a citizen suit under Section 304 of the Clean Air Act. Section 304(a)(1) authorizes "any person" to sue for violations of an "emission standard or limitation under this chapter."[173] This includes any "emission limitation, standard of performance or emission standard," any standard or limitation established "under any permit issued pursuant to [Title V] or under any applicable State implementation plan approved by the [EPA]," "any permit term or condition," and "any requirement to obtain a permit as a condition of operations."[174] This authorizes Community Groups to commence a civil action in response to violations of Tennessee's SIP requirements (1) to obtain a PSD permit containing BACT emission limits as a condition of operation of a major modification and (2) to apply BACT on a continuous basis during operation of a major modification, as alleged herein under Claims 1, 2,

[169] TVA Cumberland SEIS at 10.

[170] *Defense Production Act Title III Project Selections*, U.S. Dep't of Energy, https://perma.cc/JCH8-XVW4; *see* **Attachment 4**, Coal Life Extension Overview at 1–2.

[171] *See Wisc. Elec. Power Co.* 893 F.2d at 910–11; *Ohio Edison Co.*, 276 F. Supp. 2d at 858–62; *Cinergy Corp.*, 495 F. Supp. 2d at 930–31.

[172] Title V Permit No. 577855 at 5.

[173] 42 U.S.C. § 7604(a)(1)(A).

[174] *Id.*§ 7604(f)(3)–(4); *see Sierra Club v. Otter Tail Power Co.*, 615 F.3d 1008, 1014 (8th Cir. 2010) (describing the decision in *National Parks Conservation Association* as "finding that PSD regulations in Tennessee SIP impose ongoing duties to obtain a PSD permit and apply BACT" (citing 480 F.3d at 418–19)).

and 3. This also authorizes Community Groups to commence an action in response to a violation of an applicable condition of a Title V permit, as alleged herein under Claim 4.

Section 304(a)(3) of the Clean Air Act, 42 U.S.C. § 7604(a)(3), authorizes "any person" to sue "any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I (relating to significant deterioration of air quality)."[175] This authorizes Community Groups to commence a civil action in response to a violation of the requirement to obtain a PSD permit before beginning construction of a major modification, as alleged herein under Claims 1 and 3.

An action brought pursuant to Section 304(a)(1) may only proceed after a sixty-day notice period.[176] However, an action pursuant to Section 304(a)(3), for a claim of construction (or proposed construction) of a major modification without a PSD permit may proceed immediately, without a notice period.

V. PERSONS GIVING NOTICE AND LEGAL COUNSEL

This letter provides notice of intent to sue on behalf of Sierra Club, Appalachian Voices, and the Center for Biological Diversity. The names and addresses of the persons giving notices are:

Appalachian Voices
815 Gill Ave.
Knoxville, TN 37917

Center for Biological Diversity
1411 K St. NW, Suite 1300
Washington, DC 20005

Sierra Club
50 F Street NW – 8th Floor
Washington, DC 20001

Appalachian Voices is a grassroots nonprofit organization dedicated to bringing people together to protect the land, air, and water of Central and Southern Appalachia and to advance a just transition to a generative and equitable clean-energy economy. Appalachian Voices works collaboratively with local, state, and regional partners to promote energy efficiency and encourage the development of clean and affordable energy. Appalachian Voices meets with TVA and TVA-area distribution utilities to advocate for clean energy and supports communities across the region to help them organize and plan advocacy campaigns related to TVA's and distribution utilities' energy choices. Appalachian Voices has approximately 138 members in Tennessee.

[175] 42 U.S.C. § 7604(a)(3).

[176] *Id.* § 7604(b)(1)(A).

The Center for Biological Diversity ("Center") is a national nonprofit conservation organization focusing on the need to expedite the renewable-energy transition and protect human health, the natural environment, and species from the ravages of the climate emergency, extinction crisis, and environmental degradation. Approximately 9,000 of the Center's members live in the states served by TVA. The Center's work aimed at reducing the impact of fossil-fuel consumption has frequently addressed, on the Center's behalf and with partners, the need to protect habitat and wildlife in Tennessee.

Sierra Club is a national nonprofit organization of over 597,000 members dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club has more than 7,000 members in Tennessee.

All groups are dedicated to protecting healthy ambient air quality for all Tennesseans.

The Southern Environmental Law Center is legal counsel for Appalachian Voices, the Center for Biological Diversity, and the Sierra Club in this matter and can be contacted at the mailing and email addresses provided below.

VI. LOCATION OF VIOLATIONS

The violations set out above have all occurred at the TVA Cumberland Reservation located at or near 815 Cumberland City Road, Cumberland City, Stewart County, TN 37050.

VII. PERSONS RESPONSIBLE FOR THE VIOLATIONS

TVA is the primary party responsible for the violations listed herein. As stated throughout its recently published supplemental environmental impact statement[177] and in notifications provided to TDEC under penalty of perjury,[178] TVA constructed and began operating the Cumberland Gas Plant and is constructing or proposing to construction modifications of the Cumberland Coal Plant in Stewart County at 815 Cumberland City Road, Cumberland City, TN 37050.

TVA is a public utility owned by the United States government that delivers electricity to part or all of seven states in the Tennessee Valley region, largely via distribution to local power companies. TVA is headquartered in Knoxville, Tennessee. TVA owns and operates the emitting facilities located at the Cumberland Reservation, including the Cumberland Coal Plant and the Cumberland Gas Plant.[179]

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[177] TVA Cumberland SEIS at i, 1, 48 n.1, 53.

[178] *E.g.*, Appendix 4: Startup Certification (June 8, 2026), https://perma.cc/UZ4F-P56F.

[179] TVA is the sole permittee to whom the Title V permit for the Cumberland Fossil Plant was issued and to whom the now-invalid minor NSR permit for construction of the Cumberland Gas Plant was issued. *See* Title V Permit No. 577855 at 1; Minor NSR Permit No. 981885 at 1.

The Clean Air Act contains an unambiguous waiver of sovereign immunity applicable to any federal department, agency, or instrumentality under specified circumstances:

> Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government . . . engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity.[180]

This waiver of sovereign immunity expressly applies "to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever)" and "to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner."[181]

In addition, the Cumberland Gas Plant is subject to a "lease-purchase transaction" between TVA and Cumberland Combined Cycle Generation LLC, involving three contracts: two lease agreements and a "construction management agreement."[182] According to TVA, the "Facility Lease" agreement provides that "TVA will operate and maintain (and improve to the extent required by applicable law) the Facility and take all power from the Facility."[183] Upon information and belief, TVA retains ownership of the Cumberland Reservation and the Cumberland Gas Plant; however, one or more of these agreements may grant some type of ownership interest to Cumberland Combined Cycle Generation LLC. In addition, full ownership may transfer to Cumberland Combined Cycle Generation LLC in the event of TVA's default under the "Facility Lease" agreement.[184]

We note that TVA has access to specific information regarding the nature of any ownership interest(s) held by Cumberland Combined Cycle Generation LLC and the extent to

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[180] 42 U.S.C. § 7418(a)(2).

[181] *Id.* § 7418(a)(2)(A), (D).

[182] U.S. Sec. & Exch. Comm'n Form 8-K at 2 (May 28, 2026), https://perma.cc/96C9-4JJ4. According to financial reporting by TVA, this transaction consists of "three material definitive agreements" closed on May 26, 2026: (1) an agreement for TVA to lease the Cumberland Gas Plant to Cumberland Combined Cycle Generation LLC for a fifty-year term; (2) an agreement for Cumberland Combined Cycle Generation LLC to lease the Gas Plant back to TVA for rental payments covering a thirty-year term; and (3) a "Construction Management Agreement" under which "TVA is obligated to use commercially reasonable efforts to cause the Facility to achieve provisional acceptance" and Cumberland Combined Cycle Generation LLC will make a one-time payment based on TVA's agreement to perform that obligation. *Id.*

[183] *Id.*

[184] *See id.* ("At the end of the Facility Lease, TVA will own the Facility as long as TVA is not in default under the Facility Lease.").

which Cumberland Combined Cycle Generation LLC may have any operational control over the Cumberland Gas Plant and/or the Cumberland Coal Plant.

Cumberland Combined Cycle Generation LLC is a single-purpose limited liability company incorporated in Delaware.[185] Its registered agent is Cogency Global Inc., 850 New Burton Road, Suite 201, Dover, DE 19904.[186] Cumberland Combined Cycle Generation LLC does not list a principal office,[187] nor does it have a registered agent in Tennessee.[188]

VIII. DATES OF THE VIOLATIONS

Upon information and belief, TVA began actual construction of the Cumberland Gas Plant on or about August 17, 2024, and its construction of four of the new emission units (Source Nos. 58–59, 62–63) is ongoing. The alleged violation of constructing this major modification without a PSD permit recurred (and is recurring) each day that actual construction ensued.[189]

TVA certified under penalty of perjury that it began operating the first new emission unit, Source No. 60, on April 21, 2026.[190] TVA also certified that it began operating Source No. 61 on April 23, 2026; Source No. 55 on April 28, 2026; Source No. 57 on May 7, 2026; and Source No. 56 on May 31, 2026.[191] TVA also notified EPA that it commenced "commercial operation"

[185] *Id.*; *see Department of State: Division of Corporations*, State of Del., https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx (last visited June 24, 2026).

[186] *Department of State: Division of Corporations*, State of Del., https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx (last visited June 24, 2026) (performing entity search to view details for "Cumberland Combined Cycle Generation LLC").

[187] *Id.*

[188] *See Business Entity Search*, Tenn. Sec'y of State, https://tncab.tnsos.gov/business-entity-search (last visited June 24, 2026) (returning "no records available" to searches for "Cumberland Combined Cycle Generation LLC" or for "combined cycle").

[189] Tenn. Comp. R. & Regs. 1200-03-09-.01(1)(e); *see Nat'l Parks Conservation Ass'n*, 480 F.3d at 419 (describing "the duty to obtain a construction permit containing the proper emissions limits [a]s ongoing, even *post*-construction").

[190] Appendix 4: Startup Certification (Apr. 21, 2026) https://perma.cc/K5KM-FKAE (certifying startup date for one new dewpoint natural gas heater, Source No. 60).

[191] Appendix 4: Startup Certification (Apr. 23, 2026), https://perma.cc/2T45-WWLY (certifying startup for one dewpoint natural gas heater, Source No. 61); Appendix 4: Startup Certification (Apr. 28, 2026), https://perma.cc/88ZC-JJU6 (certifying startup for one combined-cycle unit, Source No. 55); Appendix 4: Startup Certification (May 7, 2026), https://perma.cc/RZ5C-TS6K (certifying startup for one gas-fired auxiliary boiler, Source No. 57); Appendix 4: Startup Certification (June 8, 2026) (certifying startup for one combined-cycle natural gas turbine, Source No. 56), https://perma.cc/UZ4F-P56F.

of Source No. 55 on May 29, 2026, and of Source No. 56 on June 14, 2026.[192] Upon information and belief, operation of all these new units is ongoing. The alleged violations of operating this major modification without a PSD permit and without application of BACT recurred (and is recurring) each day that operation ensued.[193]

We note that TVA has access to specific dates of its installation and operation of the new turbines and other new equipment at the Cumberland Gas Plant and any modifications of the Cumberland Coal Plant boilers and ancillary equipment.

IX. CONCLUSION

TVA has violated and continues to violate the Clean Air Act and Tennessee's federally approved SIP by (1) constructing a major modification without a PSD permit; (2) operating a major modification without a PSD permit, which under Tennessee's federally enforceable SIP is a condition of operation, and without application of emission limits that reflect BACT for the facility; (3) circumventing PSD requirements for the life-extending modifications of the Cumberland Coal Plant by artificially disaggregating those changes despite being part of the same project as construction and operation of the Cumberland Gas Plant, and (4) violating Condition A16 of its Title V permit by constructing (or proposing to construct) life-extending modifications of the Cumberland Coal Plant without any preconstruction permit. Unless these violations are fully redressed, Community Groups intend to initiate a citizen suit against one or more of the listed parties.

If litigation is necessary, Community Groups will seek redress for the violations described herein, including injunctive relief, litigation costs (including reasonable attorney and expert witness fees) under 42 U.S.C. § 7604(d), as well as civil penalties under 42 U.S.C. § 7604(a).

During the notice period initiated by this letter, Community Groups are willing to discuss the factual assertions set forth in this letter, as well as effective remedies for the violations described. If you wish to negotiate in the absence of litigation, please initiate such negotiations within the next twenty (20) days so that they may be completed prior to the end of the notice period. Community Groups have retained the assistance of counsel listed below, and all responses to this letter should be directed to the undersigned counsel.

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[192] Letter from Allen A. Clare, TVA Designated Representative, to Bryan Ramirez, EPA, at 1 (May 29, 2026), https://perma.cc/M2QK-D99K; Letter from Allen A. Clare, TVA Designated Representative, to Bryan Ramirez, EPA, at 1 (June 17, 2026), https://perma.cc/FB6M-YSVN.

[193] Tenn. Comp. R. & Regs. 1200-03-09-.01(4)(j)3. (2013); *see Nat'l Parks Conservation Ass'n*, 480 F.3d at 419 ("[F]ailing to apply BACT is actionable, and this cause of action manifests itself anew each day a plant operates without BACT limits on emissions.").

Thank you for your prompt attention to this matter.

Respectfully submitted,

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Southern Environmental Law Center

CC, via U.S. Certified Mail (return receipt requested):

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Enclosures

Attachment 1, Aerial Images of Cumberland Gas Plant

Attachment 2, TVA, Cumberland System Value Analysis (Jan. 29, 2026)

Attachment 3, Custom Data Download: EPA Clean Air Markets Program Data

Attachment 4, TVA, Coal Life Extension: Investment Overview (Dec. 12, 2025)

Referenced materials are accessible via public hyperlink or permalink in footnotes. Copies of referenced materials may also be accessed for download here: https://southernenvironment.sharefile.com/d-sa092fca8cea4450a8d6acf9d1a27027c.

Attachment 1:

Aerial Images of Cumberland Gas Plant

August 17, 2024

Planet Labs PBC, *Planet Application Program Interface: In Space for Life on Earth*, Planet (Aug. 17, 2024), https://api.planet.com (image accessed June 22, 2026).

September 15, 2024

Planet Labs PBC, *Planet Application Program Interface: In Space for Life on Earth*, Planet (Sep. 15, 2024), https://api.planet.com (image accessed June 22, 2026).

October 6, 2024

Planet Labs PBC, *Planet Application Program Interface: In Space for Life on Earth*, Planet (Oct. 6, 2024), https://api.planet.com (image accessed June 22, 2026).

November 29, 2024

Planet Labs PBC, *Planet Application Program Interface: In Space for Life on Earth*, Planet (Nov. 29, 2024), https://api.planet.com (image accessed June 22, 2026).

March 6, 2025

Planet Labs PBC, *Planet Application Program Interface: In Space for Life on Earth*, Planet (Mar. 6, 2025), https://api.planet.com (image accessed June 22, 2026).

February 27, 2026

Planet Labs PBC, *Planet Application Program Interface: In Space for Life on Earth*, Planet (Feb. 27, 2026), https://api.planet.com (image accessed Mar. 2, 2026).

May 15, 2026 (01)

J. Henry Fair (2026)

May 15, 2026 (02)

J. Henry Fair (2026)

Attachment 2:

TVA, Cumberland System Value Analysis

(Jan. 29, 2026)

Cumberland System Value Analysis – Attachment A

Board Committee Wrap-up – January 29, 2026

TENNESSEE VALLEY AUTHORITY

Purpose and Background

Purpose: Authorize TVA, at the direction and discretion of the Chief Executive Officer, to operate Cumberland Fossil Plant (CUF) in accordance with all applicable laws and regulatory requirements, including all requirements imposed by any applicable permits and seek any applicable permits that may be required to continue operating CUF, along with Cumberland Gas Plant (CUG), past its retirement dates.

Background: After completing the 2019 Integrated Resource Plan (IRP), TVA conducted an Aging Coal Fleet Evaluation (May 2021), which concluded that although no coal-fired units had reached mechanical end of life, a phased plan to retire TVA's coal fleet by approximately 2035 is aligned with least-cost planning and reduces economic, reliability, and environmental risks.

In January 2023, TVA released a Record of Decision (ROD) to retire one CUF unit by the end of 2026 and the other CUF unit by the end of 2028.

However, since these decisions, the TVA region is experiencing rapidly increasing demand for electricity that exceeded expectations at the time of the retirement decisions. Accelerated electricity demand growth is being driven by growth in data center use, population, employment, and increasing electricity demand.

Assumptions and System Value Analysis

Current load demands are greater than those assumed when the CUF decision was made and approaching the upper bounds of the 2019 IRP; load growth is expected to continue.

Available capacity is currently below TVA's firm requirement through 2031; new projects cannot reach commercial operation in time to address the near-term gap and thus market capacity purchases are required to address the reliability risk.

Market capacity needed to meet firm requirements ranges from ~1,100 to ~3,200 MW per year through 2031.

Continued operation of the CUF units reduces market capacity initially by ~1,000 and growing to ~2,000 MW.

The total investment needed to continue to operate CUF, maintain historical performance, and comply with regulatory requirements is expected to be $738 million.

The continued operation of CUF results in nearly $1.8 billion of total system cost savings driven primarily by lower market capacity needs partially offset by the investment required for CUF's continued operation and system-wide production (dispatch) costs.

National Environmental Policy Act (NEPA)

A Supplemental Environmental Impact Statement (SEIS) has been prepared for the evaluation of CUF's continued operation.

The SEIS added Alternative D to the previously studied no action and action alternatives from the Cumberland Fossil Plant Retirement Environmental Impact Statement (EIS).

Alternative D analyzed the continued operation of CUF together with operation of CUG.

The SEIS identifies the preferred alternative as Alternative D.

Risks

Operational and regulatory risks include the ultimate cost and timing of the work required to support the continued operation of CUF which could be affected by supply chain, labor, and scope of work factors.

The timing of generation availability for CUF could be a risk to cost and reliability if market capacity purchases, assumed to be avoided, are still required.

Market capacity remains constrained and ultimate price and availability is unknown; additionally, other neighboring jurisdictions are at higher risk of reliability challenges which adversely affects the fidelity of contracted market capacity.

Coal supply, transportation, and storage risks exist due to mine quality degradation, demand declines, and counterparty financial health.

Summary

Evaluation concludes that economic value exists in the continued operation of CUF and proceeding with continued operation is consistent with least-cost planning.

After a decade of flat demand, TVA is experiencing rapidly increasing load growth. To address the need for more generation capacity, TVA is investing in the existing portfolio, as well as new programs and assets.

Despite these efforts, more capacity is needed to meet demand. Market capacity may be limited or unavailable as neighboring electric utility companies are experiencing similar issues. Relying on purchased power can adversely affect TVA's ability to meet required year-round generation, maximum capacity system demands, and planning reserve margin targets.

Investing in TVA's existing fleet would be an immediate, cost-effective, and risk-informed option to safeguard against significant risks.

Recommendation

Authorize TVA, at the direction and discretion of the Chief Executive Officer, to operate CUF and CUG in accordance with all applicable laws and regulatory requirements, including all requirements imposed by any applicable permits

Direct TVA staff to apply for any permits that may be applicable to CUF and CUG for TVA to continue to operate CUF, along with CUG, beyond its currently planned retirement dates

FY26 funds needed to support the continued operation of CUF are authorized so long as the expenditures, when coupled with other FY26 expenditures, do not exceed total expenditures previously authorized in the FY26 Expenditures Approval; expenditures in later years subject to future Board-approved budgets

Approve entering into Procurement Contracts needed to support the operation of CUF with any such contracts deemed to be in conformance with the Contracting Plan approved as part of the FY26 Expenditures Approval

Attachment 3:

Custom Data Download:

EPA Clean Air Markets Program Data

Facility: Cumberland (3399)

Data Type

Emissions, Annual
Emissions, Facility
Change

Filters

Facility Count: 1

- TIME PERIOD (Required)
- PROGRAM (Optional)
- STATE/TERRITORY (Optional)
- FACILITY (Optional)
- UNIT TYPE (Optional)
- UNIT FUEL TYPE (Optional)
- CONTROL TECHNOLOGY (Optional)

Custom Data Download

Bookmark Preview Data

Filters: Time Period Facility: Cumberland (3399) Clear All

Data Preview (Viewing the first 11 records of 11)

CSV JSON Download

State	Facility Name	Facility ID	Year	Gross Load (MWh)	Steam Load (1000 lb)	SO2 Mass (short tons)	CO2 Mass (short tons)	NOx Mass (short tons)	Heat Input (mmBtu)
TN	Cumberland	3399	2015	15,377,889.58		8,849.548	14,356,845.007	5,261.193	140,076,336.96
TN	Cumberland	3399	2016	13,731,834.16		10,123.301	13,745,957.608	4,780.91	134,043,260.928
TN	Cumberland	3399	2017	10,802,963.77		6,649.123	10,505,930.073	3,424.872	102,489,396.188
TN	Cumberland	3399	2018	11,168,751.77		7,407.751	11,119,795.894	4,355.284	108,634,960.34
TN	Cumberland	3399	2019	9,772,674.1		7,208.88	10,030,892.558	3,932.159	98,240,561.1
TN	Cumberland	3399	2020	10,185,966.44		7,177.595	10,382,601.489	3,921.137	101,328,432.745
TN	Cumberland	3399	2021	11,118,081.51		8,928.575	11,709,627.985	4,473.591	114,283,434.434
TN	Cumberland	3399	2022	7,861,783.45		5,780.936	8,372,294.594	3,170.879	82,061,715.381
TN	Cumberland	3399	2023	9,747,990.78		4,074.45	10,320,486.05	3,504.61	100,801,039.935
TN	Cumberland	3399	2024	10,296,584.18		4,599.982	10,826,807.045	4,166.326	105,830,344.221
TN	Cumberland	3399	2025	9,794,971.41		5,209.335	10,281,710.852	4,065.651	100,510,061.435

Attachment 4:

TVA, Coal Life Extension: Investment Overview

(Dec. 12, 2025) (redacted)

Coal Life Extension

Investment Overview

December 12, 2025

TENNESSEE VALLEY AUTHORITY

Coal Life Strategy / Initial Capital Investment Overview

Cumberland

(b) (5) [redacted]

Kingston

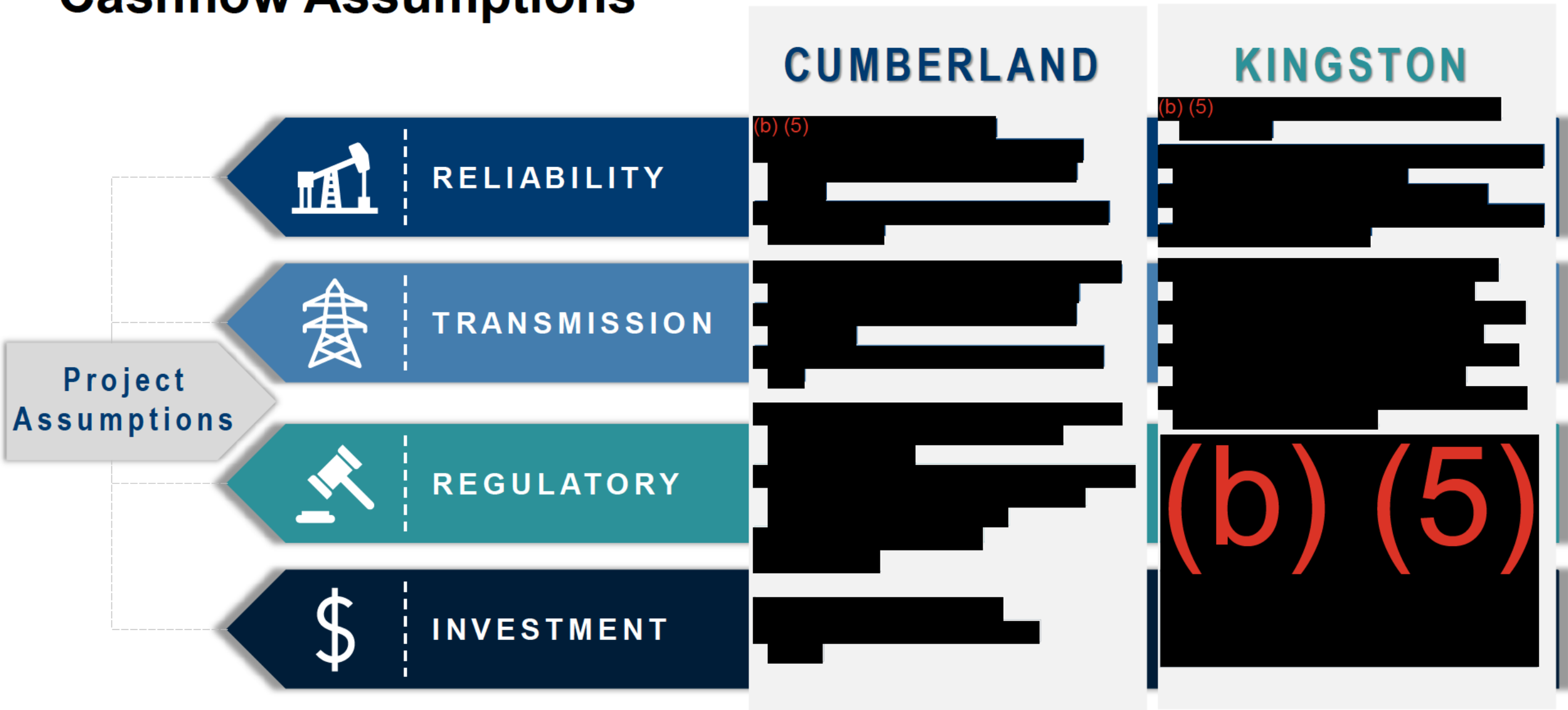
(b) (5) [redacted]

Cumberland		Kingston
Catalyst Layer Replacement, LP Front Stage Upgrades, HP Feedwater Heater Replacement, Absorber Module, Pulverizer Rebuild, etc. — (b) (5)	Reliability	(b) (5) — Boiler Tube Replacement, DCS Upgrades, Pulverizer Rebuilds, APH Baskets, SH & RH Burner Corners, Upper Deflection Arch, SCR Upgrades, Reblade ID Fans, Partial Demo of Stacks, etc.
~2 miles line construction from 500kV line to new switchyard, GIS breakers, and switchyard modifications — (b) (5)	Transmission	(b) (5) — Switchyard Modifications, Transmission Line reconfigurations, modifications and potential for additional switches
Bottom Ash Transport Water, Beneficial Reuse Facility, NEPA, 316(a), 316(b) — (b) (5)	Regulatory*	(b) (5) — NEPA, 316(a), 316(b), ELG-FGD
Total Capital Estimate — (b) (5)	Investment	(b) (5) — Total Capital Estimate
Precipitator, SCRs, and Scrubber Upgrades — (b) (5)	BACT	(b) (5) — Low NOx Burner (b) (5) [redacted] Precipitator and Scrubber Upgrades

TENNESSEE VALLEY AUTHORITY

(b) (5)

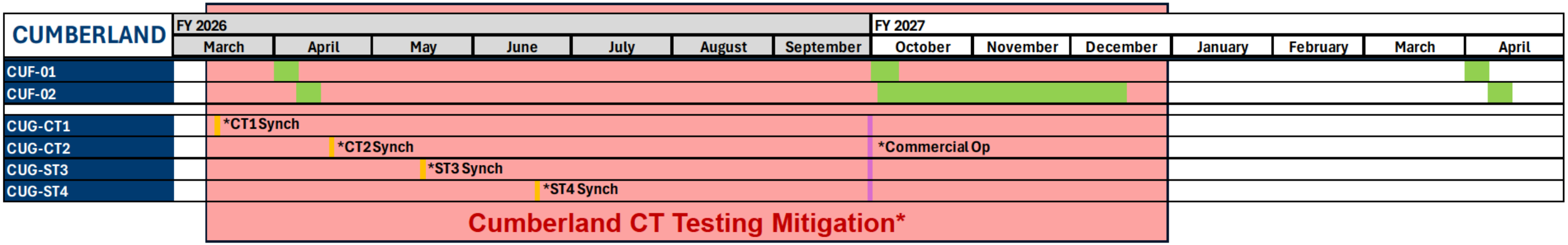
Cashflow Assumptions*

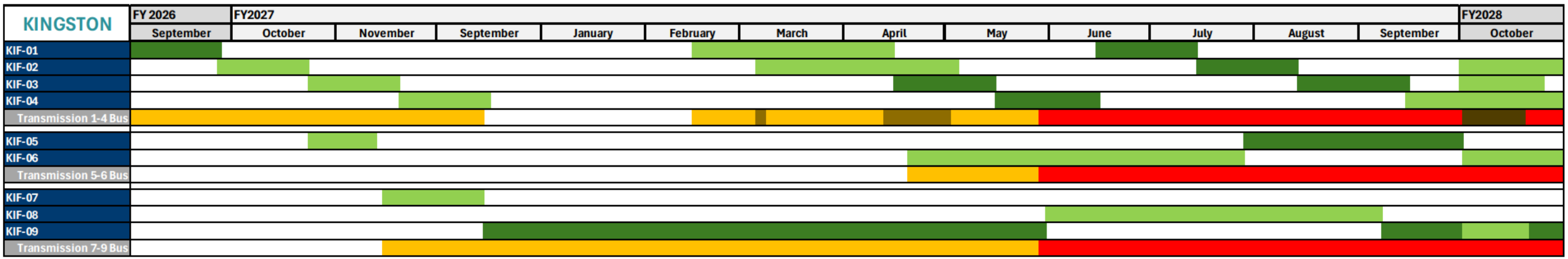


* Does not include assumptions for BACT

Outage Planning

All outage schedules are a work in-progress – Generation and Transmission are working to determine the most optimal schedule





LEGEND
Generation
Generation/Unit Outages
Transmission Constraint Requiring Unit Offline
Transmission
Transmission Outage - 1 Unit
Transmission Outage - 2 Unit
Transmission Outage - 3 Unit
Transmission - 1 Unit Permanently Offline

*Cumberland CT testing mitigation still under development – Due to breaker duty constraints, if a single CT unit is online, a coal unit is required to be offline. Permanent Solution – Cumberland FP extension 500kv (new ~2mile line) ISD: Dec 2026

TENNESSEE VALLEY AUTHORITY