RECORD OF DECISION

Plant Ratcliffe – Kemper County IGCC Project
Kemper County, MS

RURAL UTILITIES SERVICE
U.S. Department of Agriculture

South Mississippi Electric Power Association
Mississippi 53

Prepared by:
Engineering and Environmental Staff
Rural Utilities Service

September 2012

A. INTRODUCTION

The U.S. Department of Agriculture, Rural Utilities Service (RUS) has received an application from South Mississippi Electric Power Association (SMEPA) for financial assistance to acquire an undivided ownership interest in Plant Ratcliffe, an Integrated Gasification Combined-Cycle Facility located in Kemper County, Mississippi (the Project). The Project is owned by Mississippi Power Company (MPCo), has been under construction since December 2010, and has an anticipated completion date of May 2014. SMEPA's preliminary application to RUS included a request to finance the acquisition of a 17.5% ownership interest; however, they have since modified their request due to projected increases in the capital costs of the Project. RUS is now considering providing a $480 million loan guarantee that will finance the acquisition of a 15% ownership interest in the Project.

In accordance with RUS's Environmental Policies and Procedures (7 CFR Part 1794), RUS has discretion in determining whether a proposal and its action (approval of financial assistance) is subject to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 et seq., when potential borrowers will have only partial ownership of a project for which they are requesting financial assistance (7 CFR §1794.20, Control). Upon review of information provided by SMEPA under §1794.20 (c), RUS has determined that if provided financial assistance SMEPA does not have sufficient control to alter the development of the Project. Notwithstanding that decision and due to the potential federal financing assistance, RUS decided to consider the Project a federal action subject to NEPA, the National Historic Preservation Act (NHPA), and their implementing regulations, 40 CFR §§ 1500-1508 and 36 CFR Part 800, respectively in the interest of transparency.

The U.S. Department of Energy (DOE) prepared an Environmental Impact Statement (EIS) for the Project in cooperation with the U.S. Army Corps of Engineers (USACE). The DOE/USACE Final EIS was issued in May 2010, and DOE issued their Record of Decision (ROD) in August 2010. In accordance with 40 CFR § 1506.3(b), RUS determined that the actions covered by the DOE/USACE Final EIS and RUS's proposed action were substantially the same, given that no new infrastructure would be required for SMEPA's participation. RUS conducted an independent evaluation of the DOE/USACE Final EIS, the associated Mitigation Action Plan (MAP), and the DOE Record of Decision (ROD), determined the documentation met the standards of an adequate statement (40 CFR § 1506.3(a)), and adopted the documentation (Subpart H, 7 CFR Part 1794). As required by the General and Pre-Loan Policies and Procedures Common to Electric Loans and Guarantees, 7 CFR Part 1710, RUS also reviewed and approved SMEPA prepared engineering studies that assess the cooperative's proposed

involvement in the Project (see Sections C and E). RUS re-circulated the Executive Summary of the DOE/USACE Final EIS, and published a Notice of Adoption in the *Federal Register* on June 20, 2012 (77 FR 36996). The U.S. Environmental Protection Agency (USEPA) acknowledged its receipt of the DOE/USACE Final EIS and RUS's intent to adopt the document in the *Federal Register* on June 29, 2012 (77 FR 38801).

B. PROJECT BACKGROUND

The Project was developed under DOE's Clean Coal Power Initiative (CCPI), a federal program that provides financial assistance to accelerate the commercial readiness of advanced coal-based technologies capable of generating clean, reliable and affordable energy. The Project will demonstrate the feasibility of the Transport Integrated Gasification (TRIG™) Integrated Gasification Combined-Cycle (IGCC) technology for commercial operation. Two (2) gasifiers will convert lignite mined locally by North American Coal Corporation (NACC) into synthesis gas (syngas), which will be used as a primary fuel to power two (2) combustion turbines (CTs). Heat recovery steam generators will convert excess heat produced by primary combustion to drive a steam turbine that will produce additional electrical power. Natural gas will be used in the operation of the facility for startup and shutdown, duct firing for power augmentation, and as a back-up fuel supply for operation of the CTs. The Project has an expected net generation capacity of 573 MW, and has been designed to capture approximately 67% of the carbon dioxide (CO_2) that enters the facility as fuel. As compared to conventional lignite-fired electrical power plants, the Project will also demonstrate greater efficiencies and reductions in sulfur dioxide (SO_2), nitrogen oxide (NOx), mercury, and particulate emissions. In addition to the IGCC facility and the mining operation, the Project requires the construction and/or upgrading of a natural gas supply pipeline, a reclaimed water supply pipeline, a CO_2 pipeline, and electrical transmission infrastructure including power lines and substations.

In September 2008, DOE initiated its NEPA review of the Project to assess potential cost-shared financing under the CCPI and issuance of a loan guarantee under the Energy Policy Act of 2005 (EPAct05). In accordance with Section 404 of the Clean Water Act, USACE participated as a cooperating agency in the EIS to consider potential environmental impacts for the issuance of permits for stream and wetland impacts related to the Project. The Draft EIS was published for public review in November 2009, and the Final EIS, which responded to the public comments received during the comment period, was published in May 2010. DOE and USACE executed a Programmatic Agreement with the Mississippi State Historic Preservation Officer, the interested Indian tribes, the Mississippi Department of Environmental Quality, and the

Project proponents in May and June of 2010 to fulfill their responsibilities under Section 106 of NHPA. DOE executed and published their ROD in August 2010. The ROD documented DOE's decision to provide $270 million in cost-shared financing under the CCPI and to issue an agency decision about the potential loan-guarantee under the EPAct05 at a later date. The Mitigation Action Plan (MAP) was issued in September 2010, and construction began in December 2010. In addition to the federal NEPA review process, the state of Mississippi granted Air and Water Pollution Control permits in March of 2010, and the Mississippi Public Service Commission issued a Certificate of Public Convenience and Necessity (CPCN) in May 2010.[1] The Project is scheduled to commence commercial operation in May 2014.

C. PURPOSE AND NEED

Under the Rural Electrification Act of 1936, as amended (RE Act), the RUS Electric Program provides financial assistance to electric utilities and others "for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing and improving of electric service to persons in rural areas" (7 U.S.C. § 904). In 2008, RUS temporarily postponed the consideration of loans for new base load generation plants in response to an Office of Management and Budget requirement to develop a loan subsidy rate to appropriately reflect the risk associated with construction of these facilities. However, under the Consolidated and Further Continuing Appropriations Act of 2012, Congress provided RUS with $2 billion in loan funds and directed RUS to use those funds for "the construction, acquisition, or improvement of fossil-fueled electric generating plants (whether new or existing) that utilize carbon sequestration systems" (Pub L. 112-55, 125 STAT. 573). SMEPA's request for financial assistance and RUS's proposed action for the Project is consistent with the 2012 Appropriations Act, given that the Project has been designed to capture, dry, compress, and transport carbon dioxide for sequestration.

SMEPA is a consumer-owned, not-for-profit rural electric generation and transmission cooperative that provides affordable, reliable wholesale electric service to its eleven (11) member distribution cooperatives in 56 counties of Mississippi. Forty percent of SMEPA's annual energy requirements are met through their ownership in generation units capable of providing 1,315 MW of net summer peaking capacity. The remaining energy needs are met by purchasing power from Southeastern Power Administration

[1] The CPCN has since been appealed, reversed by the Mississippi Supreme Court, and remanded to the Mississippi PSC for further proceedings in March of 2012. The Certificate was reissued by the Mississippi PSC on April 24, 2012.

hydroelectric facilities and other local electric utilities, including MPCo. SMEPA currently has an all-requirements power purchase agreement (PPA) with MPCo that accounts for more than half of SMEPA's purchased power at cost-based wholesale rates. MPCo approached SMEPA in 2009 with the opportunity to participate in the Project. Acknowledging that the Project could potentially significantly impact MPCo wholesale rates (and therefore SMEPA rates due to their all-requirements PPA), and based on their need to diversify generation resources, SMEPA executed a Letter of Intent to evaluate potential joint ownership. As part of this review process, and as required by 7 CFR Part 1710, SMEPA has developed power requirements studies (load forecasts) annually to assess their anticipated electric loads and future energy requirements. The most recent assessment of anticipated load and energy resources demonstrates that SMEPA will be capacity deficient beginning in 2018; SMEPA's capacity deficit is projected to be 31 MW in 2018, 58 MW in 2019 and 64 MW in 2020. The capacity deficit significantly increases to 379 MW in 2021 and it is projected to continue to grow in the years to follow.

D. PROPOSED ACTION

SMEPA initially executed an Asset Purchase Agreement with MPCo in July 2010 for a 17.5% ownership interest. Since RUS issued its notice of adoption, SMEPA has elected to reduce their ownership interest in the Project. The reduction is due to increases in the Project's budget and SMEPA's desire to limit its capital cost. RUS is considering providing a $480 million loan guarantee to SMEPA that would provide for the acquisition of a 15% undivided ownership interest in the Project. SMEPA's interest would grant them 15% of the produced capacity, and partial ownership to the IGCC facility, the CO_2 pipeline, the reclaimed water supply line, the surface lignite mine, and onsite electrical transmission facilities.

If RUS elects to finance the Project, SMEPA will execute a Joint Ownership and Operating Agreement (JOOA) that will grant them audit rights and the right to have on-site representation during construction and subsequent operation of the facility. Should a Project Management Committee (PMC) be formed, SMEPA's representation would be proportional to their percentage of ownership, and therefore limited to 15% influence over construction and management decisions. As a result, SMEPA's ability to control day-to-day decisions will be limited. Although SMEPA will have the right to all Project-related information, as the majority owner, MPCo will have the right to make day-to-day project management decisions with respect to the construction and operation of the Project.

E. ALTERNATIVES ANALYSIS

In response to MPCo's offer of participation in the Project, the need to identify new generation capacity based on SMEPA's PRS, and pursuant to 7 CFR § 1710.252, SMEPA prepared a Generation Construction Work Plan (GCWP) in 2010 that evaluated potential options for meeting their projected power demand based on feasibility, environmental acceptability, and affordability. The GCWP evaluated the self-build option (a SMEPA-constructed generation facility), market purchases that resulted from a Request for Power Supply Proposals to meet SMEPA's capacity needs beginning in 2015 (as required by 7 CFR § 1710.254), and participation in the Project. The alternatives were evaluated by using production cost modeling to determine the best economical operation. The GCWP also included risk assessment that compared the alternatives under sensitivity scenarios, including updated load forecasting, high and low gas rates, high and low carbon tax rates, high Project capital costs, and no carbon capture by the Project.

Based on the assumption that the Project would proceed regardless of SMEPA's (and RUS's) participation, the GCWP assessed the potential impacts of the Project on wholesale rates. As discussed previously, approximately a third of SMEPA's load is served under the preexisting and immutable all-requirements PPA executed with MPCo, through which power is delivered to MPCo's service territory under cost-based wholesale rates approved by the Federal Energy Regulatory Commission (FERC). Acknowledging that the Project would have a direct impact on MPCo's wholesale rates, the GCWP determined that SMEPA's joint ownership would positively affect the wholesale rate, and therefore help minimize the unavoidable rate increases to SMEPA and its members.

The 2010 GCWP ultimately concluded that joint ownership in the Project was the best overall generation resource for not only providing the needed additional capacity, but also for the potential cost savings through the wholesale rate reductions. Due to increases in the Project's capital costs, in August 2012 SMEPA performed an updated cost-benefit analysis of the Project that reflected the reduction in gas prices and the projected increased revenue from Project by-product sales. Based on the updated ownership cost-benefit evaluation, SMEPA determined that 15% ownership would provide a net present value savings of approximately $200 million over a 30-year period. RUS has reviewed and concurred with the findings of the 2010 GCWP and the updated August 2012 cost-benefit analysis.

F. RUS ENVIRONMENTAL REVIEW

Upon receipt of SMEPA's application for participation in the Project, RUS determined the appropriate level of review in accordance with RUS's Environmental Policies and Procedures (7 CFR Part 1794). When an RUS applicant proposes to participate with other parties in the ownership of a proposal, RUS must determine whether the applicant has sufficient control and responsibility to alter its development. RUS has discretion in determining whether a proposal is subject to NEPA when applicants have between greater than five (5) and less than thirty-three and a third (33 1/3) percent ownership of the proposal (7 CFR §1794.20, Control). In accordance with 7 CFR §1794.20(c), RUS considers whether construction would be completed regardless of RUS financial assistance or approval, the stage of planning and construction, the total participation of the applicant, the participation percentage of each participant, and managerial arrangements and contractual provisions. As evidenced by the receipt of the CPCN, the commitment of financing by other parties, the continuation of construction and anticipated completion date of May 2014, and the limitations to SMEPA's influence over construction and operation of the Project, RUS determined that SMEPA would not have sufficient control to alter the development of the Project. However, due to significant public interest in the Project and potential federal financing assistance, RUS decided to consider the Project a federal action subject to NEPA in the interest of transparency.

As required by 40 CFR § 1506.3(a) and 7 CFR § 1794.72(b), RUS completed an independent evaluation of the DOE/USACE Final EIS, and reviewed the associated MAP and DOE August 2012 ROD. Based on an approved transmission impact study, RUS determined that no additional infrastructure would be required for SMEPA's participation in the Project beyond what was discussed in the DOE/USACE Final EIS. RUS therefore determined that SMEPA's partial ownership would not result in any environmental impacts beyond what was addressed in the DOE/USACE Final EIS, and concluded that all analyses included in the EIS adequately addressed the potential impacts of the Project. The engineering studies referenced in Sections C & E of this ROD were also reviewed to assess SMEPA's purpose and need, and the alternatives to their participation in the Project.

G. AGENCY AND PUBLIC INVOLVEMENT

I. Notices

RUS circulated a Notice of Adoption and the Executive Summary of the DOE/USACE Final EIS, in accordance with 40 CFR § 1502.19, and made the document available on the RUS website (http://www.rurdev.usda.gov/UWP-

eis4.htm). RUS published a Notice of Adoption in the *Federal Register* on June 20, 2012 (77 FR 36996), and the USEPA acknowledged its receipt of the DOE/USACE Final EIS and RUS's intent to adopt the document in the *Federal Register* on June 29, 2012 (77 FR 38801), which began the 30-day public review period.

II. Comments Received

The comment period concluded on July 31, 2012, during which time RUS received comments from three (3) parties: 1) a private citizen, Robert W. Smith; 2) the USEPA, Region 4; and 3) EarthJustice (see attached).

Robert W. Smith

Mr. Smith expressed his discontent with RUS's proposed involvement in the Project, and requested that the agency await the Mississippi Supreme Court's decision regarding the potential rate increase prior to making the final loan decision. RUS's assessment of the Project is based on the assumption that construction and operation of the Project will proceed regardless of SMEPA's (and RUS's) participation. As discussed in Section E of this ROD, SMEPA has requested financial assistance because participation in the Project will not only meet their capacity needs, but will also help offset the inevitable rate increases associated with the Project.

USEPA – Region 4

The USEPA's comment reiterated both their concurrence with the selection of the Project and their concerns posed when the DOE/USACE Final EIS was originally published in May 2010; USEPA's comments included the letter submitted to the DOE/USACE on June 21, 2010. RUS reviewed USEPA's comments as part of the agency's evaluation, and determined that the DOE August 2010 Record of Decision adequately addressed their concerns. While recognizing the inherent direct and cumulative environmental impacts associated with generation facilities and mining operations and encouraging avoidances and mitigation, USEPA concurred with RUS's intent to adopt the DOE/USACE Final EIS and participate in the Project.

EarthJustice

On behalf of Sierra Club, EarthJustice provided extensive comments on the legality and financial prudence of RUS's proposed financing of the Project. EarthJustice called attention to the previously referenced 2008 moratorium on financing the construction of new base load generation plants. As discussed in Section C of this ROD, while the 2008 moratorium temporarily postponed the consideration of loans

pending the development of appropriate subsidy loan rate, the 2012 Appropriations Act directed RUS to finance base load generation that utilizes carbon sequestration technologies. This authority is why SMEPA's request for financial assistance for participation in the Project is under consideration. With regard to the question of financial prudence, RUS has considered the cost-benefit analysis provided by SMEPA in the GCWP and in the updated analysis provided in August 2012, as required by 40 CFR §1502.23; however financial feasibility of SMEPA's request for financial assistance continues to be evaluated, and the final decision will be dependent on further underwriting evaluations by the RUS loan staff.

The comment also questions whether RUS has fulfilled its regulatory responsibilities under NEPA through the adoption of the DOE/USACE Final EIS, believing RUS's alternatives analysis and independent evaluation of the USACE/DOE Final EIS to be insufficient. Given that SMEPA will not have sufficient control and responsibility to alter the management of construction and operation of the Project, as discussed in Section F, the identification of potential alternative methodologies and fuel sources for the Project's design was not reasonable. Even though RUS did not evaluate Project design alternatives, as discussed in Section E of this ROD and documented in the 2010 GCWP, RUS did consider alternatives to the Project to meet SMEPA's capacity deficiency.

EarthJustice asserted that RUS had failed to evidence how the agency had undertaken their independent evaluation, as required by 7 CFR § 1794.72(b), and furthermore could not adopt the USACE/DOE Final EIS because EarthJustice believed it to be "fatally flawed". The discussion in this ROD provides an explanation of RUS's independent evaluation and determinations of the adequacy of the DOE/USACE Final EIS and associated decision documents (the MAP and ROD). RUS has also reviewed the engineering studies required under 7 CFR Part 1710, including Power Requirements Studies; a GCWP and support analyses (Request for Power Supply Proposals, Power Supply Options Study, Production Cost Analysis, and Wholesale Rate Impact Analysis); and a transmission system impact study. As a result RUS's independent evaluation, the agency has determined that the DOE/USACE Final EIS does indeed demonstrate a "hard look" at the potential impacts of the Project. RUS provides the following resource-specific responses to EarthJustice's position that the DOE/USACE Final EIS fails to disclose the full impacts of the Project.

Climate Change Impacts

The Project has been designed to capture 67% of its CO_2 emissions. This would result in annual emissions of approximately 1.6 to 2.6 million tons of CO_2 (Table

2.5-1), and not the 5.7 million tons of CO_2 estimate provided by EarthJustice. Furthermore, NEPA does not require a worst case scenario analysis. The CEQ regulations explicitly require federal agencies to use the 'rule of reason' when assessing impacts (40 C.F.R. § 1502.22(a)). Based on RUS's review of the proposed technology, and the aforementioned DOE financing and IRS tax credit decisions, RUS believes that there is sufficient assurance that the Project will meet the anticipated level of CO_2 capture. DOE completed an adequate assessment of greenhouse green emission impacts in Subsections 6.1.2 of its Final EIS, which includes a life-cycle analysis of emissions associated with the operation and maintenance of the Project and the lignite surface mine. The methodology utilized conforms to the CEQ's Draft NEPA Guidance for Consideration of the Effects of Climate Change and Greenhouse Gas Emissions (February 2010).

Air Quality Impacts

The DOE/USACE Final EIS includes an adequate assessment of the Project's potential impacts to criteria pollutants and hazardous air pollutants in Subsections 4.2.1 and 6.1.1. The assessment indicates that the Project is not expected to exceed regional National Ambient Air Quality Standards. The comparison of the Project's emissions with other coal-fired generation facilities provides a basis for assessing the relative intensity of the significance of the Project's impacts. A detailed assessment of health impacts from air pollution is included in Subsection 4.2.19.2. Volume 3 of DOE's Final EIS includes an appropriate response to the comments presented in the Sierra Club's letter on DOE's Draft EIS that posed similar comments.

Water Quality Impacts

The DOE/USACE Final EIS adequately assesses potential impacts to surface water and groundwater resources in Subsections 4.2.4.2, 4.2.5.2, 6.2 and 6.3. Representative and analytical tests of gasification ash and lignite leachate were determined to be nonhazardous. EarthJustice's letter mistakenly assumes that 100% of metals contained in dry ash and lignite will leach from the materials into surface and groundwater resources. Gasification ash and other byproducts would be marketed for beneficial use and/or onsite disposal. In the event there is not a market for beneficial use of the facility's byproducts, solid waste disposal will occur in accordance with appropriate MDEQ and NPDES permits. The Project is designed to be a zero liquid discharge system (Subsection 2.6.2.1); therefore no effluent permits are anticipated. Subsection 4.2.3 addresses soil erosion impacts. Subsection 4.2.4.2 discusses acid mine drainage concerns. Based on an analysis of site conditions present at a local mine, discharge from the mine site is

anticipated to be alkaline based on the characteristics of the regional geology and lignite.

Community Character Impacts
The facility and mine would be restricted to the industrial areas where they are currently sited. Future "sprawl" of the facilities is not anticipated. The proposed Project will not convert designated land uses associated with the Okatibbee Wildlife Management Area.

Socioeconomic Impacts
Subsection 4.2.12 of DOE's Final EIS includes an environmental justice analysis. None of these communities would be disproportionately affected by the Project. Furthermore, Section E of the ROD discusses the potential savings for SMEPA and their members should RUS elect to finance the Project.

H. RUS DECISION

In accordance with National Environmental Policy Act, as amended (42 U.S.C. § 4321 et seq.), the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR §§ 1500-1508), and RUS's Environmental Policies and Procedures, as amended (7 CFR Part 1794), RUS has determined that the environmental impacts of the Project have been adequately addressed. While acknowledging that SMEPA lacks sufficient control and responsibility over the Project, RUS determined that financing SMEPA's participation in the Project would be subject to NEPA and conducted an independent evaluation of the DOE/USACE Final EIS and associated documents. RUS also reviewed the engineering studies submitted by SMEPA that further assessed the purpose and need and alternatives of SMEPA's involvement in the Project. RUS has determined that its independent evaluation and adoption of the DOE/USACE FEIS fulfills its obligations under the above cited statute and regulations for its action related to the Project.

I. RUS LOAN REVIEW AND RIGHT OF ADMINISTRATIVE REVIEW

This ROD is not a decision on SMEPA's loan application and therefore not an approval of the federal financing assistance. The ROD and its notices conclude RUS's environmental review process in accordance with NEPA and RUS's Environmental Policies and Procedures (7 CFR Part 1794). Final loan approval is dependent on the conclusion of the financial and engineering review of the proposed Project. Issuance of

the ROD and publication of notices will allow for these reviews to proceed. There are no provisions to appeal this decision; legal challenges to the ROD may be filed in federal district court under the Administrative Procedures Act.

J. APPROVAL

This Record of Decision is effective on signature.

Dated: SEP 19 2012

John Padalino
Acting Administrator
Rural Utilities Service

Contact Information

For additional information on this ROD, please contact Ms. Emily Orler, Environmental Protection Specialist, at USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Washington DC 20250-1571, (202) 720-1414, or emily.orler@wdc.usda.gov.

Robert W. Smith

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June 28, 2012

United States Department of Agriculture
1400 Independence Avenue, SW
Mail Stop 1571
Washington, DC 20250-1571

Re: South Mississippi Electric Power Association (SMEPA)

Dear Sir or Madam:

Having a busy law practice, grandkids and three boats, I seldom take time to write letters on things seemingly well beyond my control. Your notice of intent to loan SMEPA millions of dollars to purchase 17.5% interest in Mississippi Power's Kemper County plant left me dumbfounded.

My first reaction was have these people lost their minds? Do they read the papers? Are they aware there is a very serious issue as to whether the Mississippi Supreme Court is going to let the plant expense be passed on to the public?

I will not waste my breath or ink in laying out all the reasons the proposed loan to SMEPA is a very, very bad idea. If people in your position are ignoring the facts enough to send out your recent notice, there is little anyone could say to wake you up.

Please just have the common sense to wait until the Mississippi Supreme Court rules on the Kemper Plant issue before you give away millions of dollars to facilitate purchase of a 17% interest in an albatross that may well lose billions of dollars.

Sincerely,

ROBERT W. SMITH
RWS/ws

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

July 26, 2012

Ms. Emily Orler, Environmental Protection Specialist
Rural Utilities Service
1400 Independence Avenue, SW
Washington, DC 20250

RE: EPA Review and Comments
Final Environmental Impact Statement (FEIS)
ADOPTION - Kemper County Integrated Gasification Combined Cycle (IGCC) Project,
To Provide Financial Assistance, Kemper County, MS
CEQ No. 20120199

Dear Ms. Orler:

The U.S. Environmental Protection Agency (EPA) reviewed the Adoption - Final Environmental Impact Statement (FEIS) for the proposed Kemper County IGCC Project, pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA), and Section 309 of the Clean Air Act. The Notice of Adoption includes a summary of the USDA Rural Utilities Service (RUS) proposed action, financial assistance to South Mississippi Electric Power Association (SMEPA), a rural electric generation and transmission cooperative. SMEPA proposes to obtain joint ownership (17.5%) in the Kemper County IGCC Project, and has applied to USDA/RUS for financial assistance to support this action. The RUS provides financing through direct loans and loan guarantees for the construction and operation of generation facilities and electric transmission and distribution lines and systems.

The USDA/RUS intends to adopt the U.S. Department of Energy (DOE) Final Environmental Impact Statement (FEIS) for the proposed IGCC power plant and lignite mine. The project also includes new electrical power transmission lines and upgrades of some existing transmission lines, a natural gas supply pipeline, a reclaimed water supply pipeline, and a carbon dioxide (CO_2) pipeline for offsite use in enhanced oil recovery (EOR).

EPA previously reviewed the DOE proposed action to provide cost-shared funding and a loan guarantee under the Clean Coal Power Initiative (CCPI) for the proposed Integrated Gasification Combined-Cycle (IGCC) Project. The DOE's proposed funding and loan guarantee do not include the lignite mine, although the FEIS evaluates the impact of permitting the mine as a related federal action for which US Army Corps of Engineers (USACE) is the lead agency. EPA's previously submitted written comments regarding the Final Environmental Impact Statements (EISs) for the proposed project are still applicable, please refer to the enclosed letter dated June 21, 2010.

Based on EPA's review of the FEIS, we concurred with the selection of the IGCC technology based on the emissions reduction advantages and the efficient use of the byproducts of the IGCC process. The use of reclaimed effluent and lack of process water discharges are

measures to help reduce environmental impacts. In addition, the carbon capture aspect of the project calls for reuse of a portion of the carbon dioxide (CO_2) scrubbed from plant stack emissions. In the process of subsequent usage for offsite enhanced oil recovery (EOR), some portion of the injected carbon dioxide may be sequestered. However, inherent environmental concerns exist regarding the direct and cumulative impacts of power stations and mining operations, and impacts should be avoided to the extent feasible, and unavoidable impacts should be mitigated.

Potential impacts of the proposed power plant and lignite mine include air quality, water resources, wetlands, waste, ecological, construction, socioeconomic, community and cumulative impacts. Ash containment and spill prevention, post-mining stream and habitat reclamation, wetlands mitigation, and surface water/drainage pathways are areas of particular concern, and should be addressed as the project progresses. In addition, impact mitigation and fulfillment of commitments related to community outreach efforts should continue.

EPA concurs with the USDA/RUS intent to adopt the DOE FEIS for the project, to ensure compliance with the National Environmental Policy Act (NEPA), and the National Historic Preservation Act (NHPA) and its implementing regulations at 36 CFR Part 800. We appreciate this opportunity to comment. Please send us a copy of the Record of Decision (ROD) when it becomes available. If you have any questions or need additional information, please contact Ramona McConney of my staff at (404) 562-9615.

Sincerely,

Heinz J. Mueller, Chief
NEPA Program Office
Office of Policy and Management

Enclosure

Cc: Richard Hargis, USDOE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
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June 21, 2010

Mr. Richard A. Hargis
U.S. Department of Energy
National Energy Technology Laboratory
626 Cochrans Mill Road
P.O. Box 10940
Pittsburgh, PA 15236

RE: EPA Comments Regarding
Final Environmental Impact Statement (FEIS) for the
Kemper County Integrated Gasification Combined-Cycle (IGCC) Project
CEQ No. 20100181

Dear Mr. Hargis:

The U.S. Environmental Protection Agency (EPA), pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, reviewed the subject Final Environmental Impact Statement (FEIS) for the proposed IGCC power plant and lignite mine. The project also includes new electrical power transmission lines and upgrades of some existing transmission lines, a natural gas supply pipeline, a reclaimed water supply pipeline, and a carbon dioxide (CO_2) pipeline for offsite use in enhanced oil recovery (EOR). We appreciate your responses to our comments on the Draft Environmental Impact Statement (DEIS), which are included in Volume 3 of the FEIS. EPA's comments on the FEIS are detailed below.

The U.S. Department of Energy (DOE) proposed action is to provide cost-shared funding and a loan guarantee under the Clean Coal Power Initiative (CCPI) for the proposed Integrated Gasification Combined-Cycle (IGCC) Project. The DOE's proposed funding and loan guarantee do not include the lignite mine, although the FEIS evaluates the impact of permitting the mine as a related federal action for which U.S. Army Corps of Engineers (USACE) is the lead agency.

EPA Comments regarding the Final Environmental Impact Statement (FEIS):

We concur with the selection of the IGCC technology based on the emissions reduction advantages and the efficient use of the byproducts of the IGCC process. The use of reclaimed effluent and lack of process water discharges are measures to help reduce environmental impacts. In addition, the carbon capture aspect of the project calls for reuse of a portion of the carbon dioxide (CO_2) scrubbed from plant stack emissions. In the process of subsequent usage for offsite enhanced oil recovery (EOR), some portion of the injected carbon dioxide may be sequestered.

However, inherent environmental concerns exist regarding the direct and cumulative impacts of power stations and mining operations, and impacts should be monitored as the project progresses. We also have concerns regarding the air quality impacts of the proposed project with respect to the National Ambient Air Quality Standards (NAAQS).

Impact mitigation and fulfillment of commitments related to community outreach efforts will need to be finalized as the project progresses. Potential impacts of the proposed power plant and lignite mine include air quality, water resources, wetlands, waste, ecological, construction, EJ community, cultural resources, and cumulative impacts. Ash containment and spill prevention, post-mining stream and habitat reclamation, wetlands mitigation, and surface water/drainage pathways are of particular concern to EPA.

National Ambient Air Quality Standards (NAAQS)

The FEIS does not disclose the air quality impacts of the proposed project regarding the NAAQS for the NO_2 (1-hr) standard, which became effective on April 12, 2010, and the SO_2 (1-hr) standard, which became effective on June 2, 2010. This information should be provided.

Prevention of Significant Deterioration (PSD) permit

The Prevention of Significant Deterioration permit from the MDEQ addresses the types of control methods to be included for each PSD pollutant and estimates pollutant impacts on PSD Class I and II areas, including particulate matter emission limits. Since the State of Mississippi has responsibility for submitting the State Plan encompassing all coal-fired facilities in the State, allocating emissions, and overseeing the monitoring program, the applicant will need to continue coordinating with MDEQ on these issues.

Climate Change Issues

We note that ozone is primarily formed in the atmosphere rather than "emitted," and that NOx does not have a commonly agreed upon direct radiative forcing effect, but does influence the global radiation budget, (FEIS Volume 1, page 6-3). For more information, see the following reference: http://www.epa.gov/climatechange/emissions/downloads10/US-GHG-Inventory-2010_Chapter1-Introduction.pdf, page 1-2. We also note that the GHG Tailoring Rule is now final and available at: http://www.epa.gov/NSR/actions.html#may10.

While the EOR facilities to which the Kemper County IGCC project's CO_2 will be delivered may not be *designed* for long-term sequestration of CO_2 (FEIS Volume 1, page 6-9), the FEIS describes in some detail that a percentage, (presumably unknown for the specific injection sites), is nevertheless expected to stay in the reservoir permanently, (Volume 1, page 2-16).

We note that the stated range of 0.3 to 2.1 metric tons of carbon per acre per year for reforestation may be low, (FEIS Volume 1, page 6-7). EPA's publication "*Greenhouse Gas Mitigation Potential in U.S. Forestry and Agriculture*" is available at: http://www.epa.gov/sequestr/pdf/greenhousegas2005.pdf and reports a value of 1.1 to 7.7 tonnes (i.e., metric tons) as representative of CO_2 sequestration over a 90 to 120 year timeframe (time to

saturation) for reforestation (values are for average management of forests established after clearcut harvests). We also note that soil disruption during mining and burning, or burying of unmarketable vegetation will also modify the facility's predicted overall carbon budget.

Finally, it would be useful to cite the figure of 1 metric ton sequestration potential difference between forestland and grassland, (FEIS Volume 1, page 6-7).

Impacts to Waters of the U.S.

Approximately 30 acres of wetlands and 3,632 linear feet of stream would be impacted by construction of the power plant. During the planned 40 years of lignite mining, up to 2,375 acres of wetlands and 230,080 linear feet of intermittent and perennial stream would be impacted and an additional 68,000 linear feet of ephemeral stream. Up to 295 wetland acres could be impacted by linear facilities corridors.

Avoidance and minimization of impacts should be fully realized, as required by Section 404 of the Clean Water Act and the regulations that implement it (40 CFR Part 230). In particular, perennial streams, adjacent wetlands, and their buffers that have the potential to negatively impact Okatibbee Lake should be completely avoided. The applicant should also address downstream water quality and volume effects the mine may have on the lake.

Phasing of the project Clean Water Act 404 permits should be take place every 5 years, although the initial permit may be a longer time (8 years) due to project construction time. Project phasing will allow the most recent mitigation requirements be applied, and assure more certainty of mitigation success. For future phases where mitigation banks had limited credit availability, the project should make use of newly available mitigation banks to the maximum extent practicable. Currently, there are no mitigation banks within the watershed, and the applicant is encouraged to investigate the opportunity of establishing a single user bank for the future phased impacts.

The appropriate use of site protection instruments, (such as conservation easements or other legal instruments for protecting a compensatory mitigation area in perpetuity), will be required by the USACE for any permittee-responsible mitigation for the mining area and the IGCC site. Permittee-responsible mitigation refers to the restoration, establishment, enhancement or preservation of wetlands or streams undertaken by a permittee in order to compensate for wetland or stream impacts resulting from the project. Further requirements concerning mitigation are outlined in the 2008 Corps and EPA Mitigation Rule. The first phase of the project mitigation is being designed to comply with the Mobile Corp District's 2005 SOP requirements. The 2005 requirements are outdated and may not comply with the 2008 Mitigation Rule. All future phases should comply with the latest available mitigation guidance.

If the mitigation does not meet the established success criteria, EPA recommends that no further 404 permits should be granted for future phases until the mitigation site(s) have been remediated and are meeting the success criteria and goals. The same success criteria should also apply to water quality standards associated with the project. Monitoring for water quality impacts is essential, with adaptive management plans in place to address both how operations will respond

if data indicate a progression towards Water Quality Standard (WQS) violations or degradation of quality, and how future phases would be affected by violations of WQS. Baseline data from the proposed site and comparable mining operation sites will be important reference points.

Bioaccumulation

We appreciate your responses to our DEIS comments. Your response to comment EPA-12 (FEIS Volume 3, page 85) states that the fish tissue data from Okatibbee Lake that was used in the analysis of bio-accumulative toxic effects in the FEIS was obtained from the National Survey of Mercury Concentrations in Fish (1990 through 1995). This data may not reflect more recent concentrations of fish tissue mercury levels in Lake Okatibbee. Current data would allow for more accurate model inputs, and we recommend that you coordinate with MDEQ regarding updated fish tissue sampling data.

Monitoring

Based on EPA's review of the FEIS, environmental concerns exist regarding aspects of the proposed project, and impacts should be monitored as the project progresses. In particular, effluent discharges will be regulated under the NPDES permit and Mississippi Department of Environmental Quality (MDEQ) Surface Mine Control and Reclamation Act (SMCRA).

The FEIS states that the DOE will consider additional monitoring to confirm that there are no impacts to drinking water sources as a condition of the Record of Decision (ROD). EPA recommends that measures be taken to ensure the quality of drinking water, and documentation of these measures should be included in the ROD.

Coordination activities

The FEIS describes the project team's community outreach efforts and coordination with concerned organizations. The FEIS notes that a programmatic agreement for signature by the project team and Native American tribes is underway. The programmatic agreement will include historic preservation, evaluation and resource recovery procedures. In addition, the FEIS describes the applicants' ongoing initiatives involving partnering with local schools to improve the educational opportunities in the immediate area.

The FEIS addresses most of the socioeconomic and Environmental Justice (EJ) issues raised in the DEIS. While the power plant, lignite mine and associated infrastructure are located in rural areas with EJ populations, the DOE concludes that the project would not place high and adverse impacts on EJ populations while exporting all of the benefits, (e.g., jobs, direct and indirect economic benefits, etc.). The DOE indicates that air quality, water quality, and noise and health impacts may not exceed regulatory standards. In addition, transportation, housing availability, and aesthetic impacts to the EJ populations would be the same as for the general population.

While housing availability or transportation may be the same as the general population, the impact may be disparate due to preexisting conditions. For example, the influx of workers during the demonstration period could increase the demand, and ultimately the cost, for housing

in the area. Studies show that lower income households most often have a higher cost burden for both housing and transportation in all neighborhoods, and that these are the two largest expenses in most working families' budgets. This potential impact should be acknowledged, and any potential mitigation measures (i.e. housing or rental assistance), should be identified in the ROD. The FEIS also indicates that construction and operation of the proposed facilities could have positive economic effects for the EJ population by creating employment and direct and indirect income in the area.

EPA commends DOE on its initiatives regarding partnerships with area schools and organizations. We encourage the applicant to continue to provide opportunities for ongoing community engagement (i.e., Citizen Advisory Council) during pre-construction, construction and operational phases of this project. In addition, we encourage the applicant to continue to pursue a strategy of providing employment and training opportunities for local EJ populations within the vicinity of the project to ensure that they benefit equitably from the project.

The FEIS indicates that *"there would be an increase in traffic on area roadways resulting in a potential increase in accidents and injuries. The increase in truck traffic during the initial 6 months of operations involving transport of lignite from the Red Hills Mine would be especially severe. DOE would consider mitigation measures as a condition of the ROD."* EPA commends DOE on efforts to address worker and residential safety issues associated with increased traffic. We recommend that the DOE consult with the Mississippi Department of Transportation and/or Federal Highway Administration Mississippi Division on the development of these mitigation measures prior to issuance of the ROD.

The DOE dismissed alternative power generation technologies because they do not meet the CCPI program's purpose and need, nor do they meet those of the applicant. The FEIS notes that if any significant changes to the selected IGCC technology occur, DOE would assess the need for further evaluation, including further interagency coordination. EPA would expect additional NEPA evaluation and interagency coordination in the event that the selected IGCC project changes.

In conclusion, we appreciate the opportunity to review this FEIS and your continuing coordination with us. Please provide us with a copy of the ROD when it becomes available. If you have questions, please contact Ramona McConney (404/562-9615) of my staff.

Sincerely,

Heinz J. Mueller, Chief
NEPA Program Office
Office of Policy and Management

Cc: Skip Young, P.G., USACE Mobile District

EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

July 30, 2012

Via Certified and Electronic Mail (emily.orler@wdc.usda.gov)
Emily Orler
Environmental Protection Specialist
USDA Rural Utilities Service
1400 Independence Avenue, SW, Stop 1571
Washington, DC 20250-1571

Re: Comments on RUS's Proposed Adoption of a Final Environmental Impact Statement for a New Coal-Fueled Power Plant and Strip Mine in Kemper County, Mississippi

Dear Ms. Orler:

Thank you for the opportunity to provide feedback on the proposed adoption by the Rural Utilities Service ("RUS") of the Final Environmental Impact Statement ("FEIS") that was prepared by the Department of Energy ("DOE") for Mississippi Power Company's 582-megawatt coal-fueled Plant Ratcliffe, the adjacent 12,275-acre lignite strip mine, and all associated infrastructure currently under construction in Kemper County, Mississippi (collectively, "the Project"). On behalf of the Sierra Club, we offer the following comments, noting at the outset our concern regarding the possibility that RUS would provide the financial assistance to allow South Mississippi Electric Power Association ("SMEPA") to acquire a 17.5 percent ownership interest in a multibillion-dollar venture that is already $484 million over budget[1] and is projected to raise electric rates by an estimated 45 percent.[2]

RUS has made clear that the financial risks accompanying base load electric power generation are too great to justify any additional federal investment. In 2008, RUS instituted a moratorium on loans for construction of new base load generation plants given the number of such loans that were then outstanding.[3] The provision of any RUS loans for the Project would violate this policy and saddle taxpayers with financial risks that private investors are unwilling

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[1] *See* Mississippi Power Company, Monthly Status Report: Through May 2012, Mississippi Public Service Commission Docket No. 2009-UA-0014 (filed July 6, 2012).

[2] Amy McCullough, *'About a third' is really closer to about half: Despite claims by Mississippi Power Company, Kemper plant could raise ratepayer rates by more than 45%*, MISSISSIPPI BUSINESS JOURNAL, Aug. 22, 2010, *available at* http://msbusiness.com/2010/08/%E2%80%98about-a-third%E2%80%99-is-really-closer-to-about-a-half/ (last visited July 30, 2012).

[3] *See* Letter from James M. Andrew, Administrator, USDA Utilities Program, to Henry A. Waxman, Chairman, Committee on Oversight and Government Reform (Mar. 11, 2008), *available at* http://democrats.oversight.house.gov/images/stories/documents/20080312104146.pdf ("Moratorium Letter").

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to take. Indeed, Mississippi Power has not disclosed how it intends to finance the 82.5 percent of the Project over which it retains responsibility, and its request for permission to transfer responsibility for $55 million of the escalating Project construction costs to ratepayers via an electricity rate increase was denied by the Mississippi Public Service Commission last month.[4] Stated simply, the financial risks associated with the Project make financial assistance of any kind by RUS imprudent.

RUS acknowledges that its proposed funding of SMEPA's stake in the Project is subject to the National Environmental Policy Act ("NEPA")[5] and has indicated that, in order to comply with NEPA, it will adopt DOE's FEIS for the Project. While RUS's NEPA-implementing regulations permit the adoption of another federal agency's EIS, such adoption is allowable only where RUS makes an independent determination of the adequacy of the EIS.[6] Here, the Notice of Adoption contains no evidence that RUS has undertaken any independent evaluation of the DOE's FEIS, let alone concluded that it is adequate. That document—for the reasons discussed below and those identified in the comments submitted by the Sierra Club on DOE's draft EIS for the Project, which we incorporate by reference—is fatally flawed and cannot be relied upon by RUS to satisfy its obligations under NEPA.

DOE's FEIS fails to disclose the full extent of environmental damage that will result from the construction and operation of the Project or to consider reasonable alternatives to avoid or mitigate this damage. These failures violate NEPA's fundamental mandate to fully vet the environmental consequences of federal actions including major funding decisions. Like DOE, RUS is obliged to take a "hard look" at environmental consequences and alternatives and cannot simply rubber stamp a predetermined decision to subsidize a particular project.

I. The FEIS Fails to Disclose or Analyze the Full Extent of Environmental Damage that Will Result from the Project.

DOE's FEIS neither discloses nor assesses the full range of environmental consequences of providing federal financing for Mississippi Power's coal plant and strip mine.[7] Under NEPA,

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[4] *See* Mississippi Public Service Commission, Order Denying CNP-A Filing, Mississippi Public Service Commission Docket No. 2011-UN-0135 (filed June 22, 2012) (denying Mississippi Power's request for cost recovery from ratepayers during the pendency of the appeal before the Mississippi Supreme Court of the issuance of a certificate of public convenience and necessity for the Project).

[5] USDA Rural Utilities Service, South Mississippi Electric Cooperative: Plant Ratcliff, Kemper County Integrated Gasification Combined-Cycle (IGCC) Project (Notice of Adoption of a Final Environmental Impact Statement), 77 Fed. Reg. 36,996 (June 20, 2012) ("Notice of Adoption"); *see also Sierra Club v. U.S. Dep't of Agric.*, 777 F. Supp. 2d 44 (D.D.C. 2011) (holding that RUS was subject to NEPA where it provided financial assistance for the expansion of a coal-fired power plant).

[6] *See* 7 C.F.R. § 1794.72(b).

[7] The Clean Coal Power Initiative ("CCPI") funds that DOE has granted to Mississippi Power were dedicated to the construction and operation of Plant Ratcliffe itself. Any financial assistance from RUS would fund both the coal plant and the strip mine. *See* Asset Purchase Agreement between Mississippi Power Company and South Mississippi Electric Power Association: Kemper County IGCC Project (July 27, 2010), Exhibit B, Mississippi Public Service

an agency must take a "hard look" at the direct, indirect, and cumulative impacts of its proposed action.[8] The FEIS devotes little attention to the greenhouse-gas-emission consequences of selecting the Project for federal assistance and entirely fails to assess cumulative impacts on climate. In addition, the FEIS contains inadequate discussion of the direct impacts to air quality, water quality, community character, and social and economic conditions that will be caused by the construction and operation of Plant Ratcliffe and the adjacent lignite strip mine.

A. Climate Change Impacts

The FEIS fails to analyze the impacts of the greenhouse gases generated by the Project, which will total an estimated to 5.7 million tons of CO_2 every year. While the FEIS identifies the grave climate threats presented by greenhouse gas emissions from the U.S. power generation sector, *see* FEIS at 6-4–6-5 ("Approximately 42 percent of CO_2 emissions came from the generation of electrical power."), it gives short shrift to the impact of greenhouse gas emissions from the Project and makes no attempt to address the cumulative impact of the Project in combination with other federal actions that will result in greenhouse gas emissions. Without any effort to consider cumulative impacts of other "past, present, and proposed, and reasonably foreseeable actions,"[9] the FEIS merely asserts that the plant "would add a relatively small increment to emissions of these gases in the United States and the world." *Id.* at 6-4.

The FEIS ignores the very real possibility that Mississippi Power will fail to reach its stated CO_2 capture goal of 67 percent of total missions. Without an enforceable air permit provision, there is no guarantee that any level of CO_2 capture will be achieved. Nevertheless, the FEIS does not even include a calculation of the Project's total CO_2-generation capacity, but assumes that at least 50 percent of CO_2 emissions will be captured. *See id.* at 6-3. It goes on to suggest that construction of the plant might have a neutral or even positive impact greenhouse gas emissions. *See id.* at 6-6–6-8. In this regard, the FEIS states that the proposed Ratcliffe coal plant—if CO_2 capture goals are achieved—would reduce emissions of CO_2 (and other pollutants) "compared to conventional lignite-fired power plants," *id.* at 1-1, and that "it cannot be assumed that, if the Kemper County IGCC Project were not built, these additional emissions would be avoided—other less efficient and/or more CO_2-emitting fossil fuel power plants might be constructed in its stead, or existing plants might produce more power, thereby increasing their CO_2 emissions," *id*. at 6-6. The assumption that absent construction of the Project other coal-fired power plants would be built in its stead is wrong. The Environmental Protection Agency ("EPA") has stated that, given the economics of the energy sector, it "does not project any new coal-fired [electric utility generating units ("EGUs")] without [carbon capture and

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Commission Docket No. 2010-UA-424 (filed Dec. 2, 2010). Therefore, RUS must undertake a complete analysis of the environmental impacts resulting from mining operations and consider fuel alternatives other than sourcing coal from a strip mine in Kemper County.

[8] 40 C.F.R. §§ 1502.16(a), (b), 1508.8; *Defenders of Wildlife v. Babbitt*, 130 F. Supp. 2d 121, 136 (D.D.C. 2001).

[9] *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 345 (D.C. Cir. 2002).

sequestration ("CCS")] to be built . . . through 2030."[10] Indeed, EPA's Integrated Planning Model projects that no new coal-fired EGUs will be built until at least 2020.[11]

The FEIS's superficial analysis of climate change impacts cannot pass muster. At the very least, NEPA requires consideration of the cumulative impact of greenhouse gas emissions from the Ratcliffe coal plant in combination with greenhouse gas emissions from other electricity generation projects that have received federal funds or will do so in the foreseeable future.[12] Financing the Project in combination with other coal plants and other major emitting projects has a collectively significant impact on global warming that requires meaningful analysis in an EIS. The failure even to identify other pending large-scale greenhouse-gas-emitting projects that qualify for federal funding renders the cumulative impact analysis inadequate.[13]

Further, the FEIS contains no analysis of the lifecycle greenhouse gas emissions of Mississippi Power's proposed operations. Crucially, Mississippi Power does not have the capacity to sequester CO_2 itself, and the plant's air permit does not impose any emission limits for CO_2 or otherwise require the plant to undertake CCS. Instead, Mississippi Power has proposed to use "best efforts" to deliver any captured CO_2 offsite to oil fields where the CO_2 would be injected into subsurface reservoirs for purposes of extracting crude oil.[14] This "enhanced oil recovery" ("EOR") will make oil available to be burned with quantifiable greenhouse gas emissions. Despite the obvious climate consequences that will result from this arrangement, the FEIS includes no discussion of, let alone a "hard look" at, the lifecycle impacts of the EOR that will be made possible by the availability of CO_2 from Plant Ratcliffe.

In addition, the FEIS does not include any analysis of the emissions consequences that will result from encouraging the use of inefficient lignite coal as opposed to other fuel sources or of the possibility that Mississippi Power's carbon capture/EOR plan proves unworkable. *See* FEIS at 4-151; 6-9 (failing to consider the prospect of CO_2 leaks despite the despite the acknowledgement that Mississippi Power is proposing to pipe CO_2 to enhanced oil recovery operations that "are not presently designed for long-term sequestration of CO_2"). Given the lack of a guarantee that the Project achieve a particular level of CO_2 capture, the FEIS should have included consideration of the impact of the annual emission of 5.7 million tons of CO_2. More broadly, the FEIS contains no consideration of the lost opportunity costs of the failure to invest in energy efficiency and renewable energy resources as opposed to coal. The wholesale failure to engage these issues renders the FEIS inadequate.

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[10] EPA, Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units, 77 Fed. Reg. 22,392 (Apr. 13, 2012).

[11] *See id.* at 22,394.

[12] *See* 40 C.F.R. § 1508.7; *City of Carmel-By-The-Sea v. Dep't of Transp.*, 123 F.3d 1142, 1160–61 (9th Cir. 1997) (NEPA requires a cataloguing of past, present, and reasonably foreseeable future actions and an analysis of the cumulative impact of such actions).

[13] *See City of Carmel-By-The-Sea*, 123 F.3d at 1160; *Grand Canyon Trust*, 290 F.3d at 345.

[14] DOE, Approval of Repayment Waiver and Site Relocation (May 22, 2008).

B. Air Impacts

Once in operation, the plant will emit thousands of tons per year of "criteria" pollutants regulated under the federal Clean Air Act's National Ambient Air Quality Standards ("NAAQS"): 2,214 tons per year of nitrogen oxides ("NO_X"), which form acid rain and ground-level ozone; 685 tons per year of sulfur dioxide ("SO_2"), which causes asthma and other respiratory illnesses and which, in combination with NOX, causes acid rain and regional haze; 549 tons per year of fine particulate matter ("$PM_{2.5}$"),[15] which causes serious heart and lung problems and premature deaths; and 183 tons per year of volatile organic compounds ("VOCs"), precursors to the criteria pollutant ozone. *See* FEIS at 4-6. The plant will also emit hazardous air pollutants including nearly 400 pounds of lead and an estimated 64.4 pounds of mercury every year. *See id.* at 4-140 (disclosing that hazardous air pollutant emissions from the proposed Ratcliffe plant will be responsible for a 10 percent contribution to cancer risk that is four times higher than the accepted EPA threshold).

These emission increases matter. For instance, with respect to mercury, the Mississippi Department of Environmental Quality ("MDEQ") has issued fish consumption advisories due to mercury contamination of fisheries around the state.[16] The Ratcliffe plant would contribute further to mercury deposition, making an existing problem even worse. *See* FEIS at 4-146 (acknowledging that mercury emissions from the Ratcliffe project will incrementally increase fish consumption risks, which are higher than the acceptable "hazard quotient" and thus "a cause for concern").

With respect to fine soot or $PM_{2.5}$, the threats posed by the Ratcliffe plant's projected emissions are even more acute. Inhalation of $PM_{2.5}$ causes short- and long-term adverse health effects including serious respiratory and cardiovascular problems such as asthma and heart attacks and even premature death.[17] According to the World Health Organization, "there is little evidence to suggest a threshold below which no adverse health effects would be anticipated" from airborne $PM_{2.5}$.[18] Threats to human health begin at or slightly above the background concentration, and health threats increase with concentration in a linear fashion. [cite] In other words, no level of anthropogenic $PM_{2.5}$ is safe. At the same time, "[e]ven small reductions in $PM_{2.5}$ levels may have substantial health benefits on a population level."[19] According to EPA, decreasing $PM_{2.5}$ in the ambient air by only 0.5 milligrams per cubic meter

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[15] "Fine particle pollution or $PM_{2.5}$ describes particulate matter that is 2.5 micrometers in diameter and smaller." EPA, *Fine Particle ($PM_{2.5}$) Designations, Basic Information*, http://www.epa.gov/pmdesignations/basicinfo.htm (last visited July 30, 2012).

[16] *See* MDEQ, *Mississippi Fish Tissue Advisories and Commercial Fishing Bans*, http://www.deq.state.ms.us/mdeq.nsf/page/FS_Fish_Tissue?OpenDocument (last visited July 30, 2012).

[17] *See* EPA, *Fine Particle ($PM_{2.5}$) Designations, Basic Information*, http://www.epa.gov/pmdesignations/basicinfo.htm (last visited July 30, 2012).

[18] World Health Organization, *Air Quality Guidelines: Global Update 2005 275–277* (2006), *available at* http://www.euro.who.int/__data/assets/pdf_file/0005/78638/E90038.pdf (last visited July 30, 2012).

[19] 70 Fed. Reg. 65,984, 66,006 (Nov. 1, 2005).

($\mu g/m^3$) can prevent as many as 25–50 premature deaths each year.[20] Here, the FEIS indicates that emissions from the Ratcliffe coal plant will increase 24-hour $PM_{2.5}$ concentrations by 5.2 $\mu g/m^3$ and annual $PM_{2.5}$ concentrations by .91 $\mu g/m^3$—a major incremental increase in ambient air pollution that necessarily implicates significant health risks. *See* FEIS at 4-9; *see also id.* at 4-3 (disclosing that $PM_{2.5}$ 24-hour concentrations will increase by 4.3 $\mu g/m^3$ and annual concentrations will increase by .7 $\mu g/m^3$ during construction.)

The FEIS's conclusory statement that Plant Ratcliffe's emissions are less relative to other coal plants cannot diminish the significant adverse impacts from the Project, and the failure to grapple with those impacts precludes the hard look required under NEPA. The deficiencies of the FEIS's assessment of health impacts from air pollution are more fully detailed in the comments submitted by the Sierra Club on DOE's draft EIS for the Project, which have been incorporated by reference herein.

C. Water Quality Impacts

The FEIS also lacks an analysis of the full extent of potential water quality impacts from the construction and operation of Plant Ratcliffe and the adjacent lignite strip mine. As the FEIS acknowledges, the plant will generate approximately 75 tons per *hour* of "gasification ash from accumulation of noncombustible mineral material originally present in the lignite"—translating to approximately 560,000 tons of ash per year. FEIS at 2-69–2-70. The FEIS further discloses that the ash will contain the same toxic heavy metals that are constituents of lignite coal. *See id.* Based on sampling data from the "most representative material available," these metals will readily leach into groundwater. FEIS at 2-70. Specifically, leachate tests of ash from an Alabama facility that gasifies Mississippi lignite revealed pollutant concentrations well over the maximum contaminant levels ("MCLs") deemed safe by EPA. *See id.* (Table 2.6-4). Arsenic was detected at .042 milligrams per liter (mg/L), over four times the MCL of .01 milligrams per liter (mg/L); cadmium was detected at .036 mg/L, again well over the MCL of .005 mg/L; and barium was detected at 1.9 mg/L, just shy of the MCL of 2 mg/L. *See id.*[21]

Given the results of this leachate testing, the FEIS should have included serious consideration of groundwater contamination threats posed by ash disposal at the Project site and analyzed available mitigation measures. EPA and conservation groups have documented widespread groundwater contamination from ash sites around the country.[22] It is further well-

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[20] *See id.*

[21] *See also* EPA, *Basic Information about Regulated Drinking Water Contaminants and Indicators*, http://water.epa.gov/drink/contaminants/basicinformation/index.cfm (last visited July 30, 2012).

[22] *See* EPA, *Coal Combustion Waste Damage Assessments* (July 9, 2007), *available at* http://graphics8.nytimes.com/packages/pdf/national/07sludge_EPA.pdf (last visited July 30, 2012); Environmental Integrity Project, Earthjustice, *Out of Control: Mounting Damages from Coal Ash Waste Sites* (Feb. 24, 2010), *available at* http://earthjustice.org/sites/default/files/library/reports/ej-eipreportout-of-control-final.pdf (last visited July 30, 2012); Environmental Integrity Project, Earthjustice, and Sierra Club, *In Harm's Way: Lack of Federal Coal Ash Regulations Endangers Americans and Their Environment* (Aug. 26, 2010), *available at* http://earthjustice.org/sites/default/files/files/report-in-harms-way.pdf (last visited July 30, 2012).

documented that this contamination poses serious risks to people living near ash sites—especially people living in Kemper County who rely on wells for their drinking water. A recent risk assessment by EPA reveals that the cancer risk from arsenic and other pollutants that leak from ash landfills is as high as 1 in 2000, 50 times the risk threshold that EPA deems acceptable.[23]

Notwithstanding the readily available data on water contamination from coal ash, the FEIS fails even to identify the risks associated with the annual disposal of hundreds of thousands of tons of ash at the Project site. Instead, it states simply that "the ash would be classified as industrial/special waste in the state of Mississippi, and the ash management unit would be subject to the permit requirements and regulations of MDEQ." FEIS at 4-12. However, reliance on state permitting to avoid assessment and disclosure of water pollution risks cannot satisfy NEPA's requirements, especially given that Mississippi regulations leave regulators discretion to permit new unlined landfills without groundwater monitoring requirements, which are necessary to ensure compliance with MCLs.[24]

In addition to the harms posed by the disposal of coal ash at the Project site, mining operations of the scale contemplated by Mississippi Power almost always leave a legacy of water pollution and poisoned groundwater that rarely can be remedied. Across the "coal country" of Pennsylvania, West Virginia, Ohio and many other states, acid mine drainage has proven to be an intractable problem that remains unresolved even after investment of millions of dollars in clean-ups over many decades. The disruptive effects of surface mining flow from the sheer volume of material disturbed during the mining process. In order to access below-ground coal seams, massive amounts of soil and rock must first be removed. Excavation of this overburden brings to the surface huge amounts of heavy metals and other chemical compounds that were once relatively stable under the ground. Once excavated, these materials, many of which are toxic, are more readily introduced into surface water or groundwater. Indeed, mine pit excavation itself may expose underground aquifers, creating a pathway for groundwater contamination. Streams that run near or through mining sites can become so polluted with iron that their water turns reddish-orange in color or becomes so highly acidic that it cannot support aquatic life.

In addition to heavy metals and other chemicals, mining operations and subsequent soil erosion generate a great deal of sediment that, if not properly managed, is released into streams, wetlands, and other surface water bodies, resulting in the degradation of water quality and adverse impacts to fish and other aquatic species. Even after reclamation activities have been completed, mining contaminants will continue to be deposited via runoff into streams and wetlands, leading to increased turbidity, siltation, and greater variation in streamflow and water temperature, and will continue to leach into and migrate through groundwater.

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[23] *See* 75 Fed. Reg. 35,128, 35,145–46 (June 21, 2010).

[24] *See* MS ADC 11-2-4:IV.C.1.b.

Mining operations also ravage the landscape. All of the trees and ground cover within the mine footprint prior to any excavation, and even if the mine is eventually reclaimed, the diverse native vegetation is generally lost forever. This sort of aggressive land clearing destroys wildlife habitat and either drives out and displaces or simply kills species that had been living in the mine area. Once the mined land is reclaimed, many animal species cannot adjust to the altered landscape and do not return. Given changes to the naturally occurring soil layers following mining and reclamation, regrowth of native vegetation is often impossible. The lack of appropriately protective plant cover frustrates the soil stabilization and can result in additional erosion and runoff and an increased likelihood and severity of floods.

There can be no doubt that the unearthing of over 185 million tons of coal from over 100 feet below the ground surface along with the associated excavation of possibly billions more tons of metal-laden overburden and the disturbance of over 50 miles of streams and thousands of acres of wetlands across a 31,000-acre area of land will have a profound effect on water resources and the hydrogeological system. Despite these high-stakes environmental threats, however, the FEIS does not include any analysis of the impacts to water resources that will occur over the 40-year life of the mine. Of particular concern, the mining permit issued by the state permit board includes no enforceable provisions that would guarantee reclamation of the mined area to pre-mining conditions or that would ensure the protection of the hydrologic balance of the area. Absent the inclusion of a comprehensive analysis of the environmental impacts threatened by the mine and available mitigation measures, the FEIS remains deficient.

D. Community Character Impacts

Already, construction activities at the Project site are destroying acres of forest, degrading local air quality, and disrupting an otherwise peaceful, rural community. Further construction and eventual operation of the coal plant and strip mine will destroy over 50 miles of streams and thousands of acres of wetlands, industrialize an estimated 13,925 acres of prime farmland and undeveloped forest, and burden surrounding communities with toxic air and water pollution for generations to come. The sprawling industrial complex proposed by Mississippi Power—including the new generating units, the lignite strip mine, access roads, electrical power transmission lines and substations, two cooling towers, a cooling water supply pipeline, a natural gas pipeline, a flare derrick, a reservoir for wastewater storage, open coal storage pits, crushed coal storage silos, coal milling and drying facilities, coal conveying equipment, and coal ash disposal units—if built, inevitably will transform the natural landscape and unique community character of rural Kemper County forever.

The first segment of the proposed strip mine will be located just a mile from the Okatibbee Wildlife Management Area, which surrounds Lake Okatibbee, a popular recreation destination. The nearly 7,000-acre Wildlife Management Area, which includes habitats ranging from mature bottomwood hardwood forests to marshlands, supports a variety of plant and animal species that is representative of the great biodiversity found throughout Kemper County. Indeed, 156 unique vascular plant species have been identified in the life of mine area,

and alligators, bald eagles, wild turkey, white-tailed deer, raccoon, opossum, armadillo, rabbit, wild boar, panther, black bear, bobcat, fox, quail, cottontail, owls, sharp-shinned and red-shouldered hawks, hairy, red-bellied and redheaded wood-peckers, wood stork, and box turtle, among scores of other species, call this area home. Mining operations would include bulldozing the habitats of these species, and Mississippi Power offers no assurance that such habitat will ever be restored. The FEIS contains absolutely no consideration of the impact on the community that an industrial conversion of the scale proposed here will cause.

E. Socioeconomic Impacts

The FEIS devotes little attention to the impact that the Project will have on the social and economic resources of the affected communities, focusing almost exclusively on job creation. *See* FEIS at 4-9–4-100. The negative effects of the Project on the social or economic wellbeing of people living in the vicinity of the Project are not analyzed. These impacts, along with the adverse environmental impacts, will be borne disproportionately by low-income communities, *see* FEIS at 3-179—indeed, some of the poorest in the State—whose residents will not be able to relocate to escape the Project's threats.

In addition, more than 150,000 Mississippi residents will be saddled with the actual construction costs of the Project if the rate increases sought by Mississippi Power are eventually granted. Projected residential electric rate increases needed to fund construction of the Project have been estimated at 45 percent.[25] Remarkably, the FEIS only identifies the potential for an eight percent increase. *See* FEIS at 4-96. This discrepancy renders the FEIS inadequate, and RUS must make an independent assessment of the potential impacts on ratepayers.

II. The FEIS Fails to Consider a Reasonable Range of Alternatives.

The FEIS's failure to consider a reasonable range of alternatives frustrates the fundamental purpose of NEPA—to inform the public and decision-makers of the environmental consequences of a proposed action—and renders the document legally deficient. The FEIS provides no meaningful consideration of alternatives other than DOE's preferred alternative, *i.e.*, the funding of the project, and a "no action" alternative to deny the requested federal assistance. Under this arrangement, industry is permitted to present proposals on a "take it or leave it" basis, leaving no mechanism for the consideration of potential improvements to a given project, much less different proposals that the government itself could solicit.

NEPA requires that "all agencies of the Federal Government shall study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which

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[25] Amy McCullough, *'About a third' is really closer to about half: Despite claims by Mississippi Power Company, Kemper plant could raise ratepayer rates by more than 45%*, MISSISSIPPI BUSINESS JOURNAL, Aug. 22, 2010, *available at* http://msbusiness.com/2010/08/%E2%80%98about-a-third%E2%80%99-is-really-closer-to-about-a-half/ (last visited July 30, 2012).

involves unresolved conflicts concerning alternative uses of available resources."[26] In preparing an EIS, agencies must "[r]igorously explore and objectively evaluate all reasonable alternatives" to a proposed action.[27] Indeed, the requirement to consider alternatives is "the heart of the environmental impact statement," because it compels agencies to "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public."[28] Fundamentally, an agency must "to the *fullest* extent possible . . . consider alternatives to its action which would reduce environmental damage."[29] Absent this comparative analysis, decisionmakers and the public can neither assess environmental trade-offs nor avoid environmental harms.[30]

In determining whether an agency has sufficiently analyzed a reasonable range of alternatives in its EIS, a "rule of reason" governs.[31] While agencies are not required to consider alternatives that are "remote and speculative," they must deal with circumstances "as they exist and are likely to exist."[32] Here, the failure to give detailed consideration to *any* alternative other than Mississippi Power's coal plant proposal was unreasonable. By looking only at that one proposal, DOE foreclosed an informed choice between viable alternatives in violation of NEPA. As the courts have made clear, the "existence of reasonable but unexamined alternatives renders an EIS inadequate."[33] Where, as here, an agency considers only the preferred alternative and the no action alternative, the resulting EIS has commonly been held deficient.[34]

In an effort to justify its failure to consider alternatives other than the "no fund" alternative, DOE has taken the position that, in awarding CCPI grants, its consideration of alternatives is constrained to the proposals it receives from industry, and that it has no discretion to consider alternatives to a given proposal because it cannot require an industry applicant to implement such alternatives. *See* FEIS at 2-73 ("Any reasonable alternative to the proposed action must . . . be an alternative that was the subject of an application that a private proponent submitted to DOE"). This is wrong. As a matter of course, DOE (and, likewise, RUS) has very broad discretion to condition its grant awards and is free to reject unambitious or

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[26] 42 U.S.C. § 4332(2)(E).

[27] 40 C.F.R. § 1502.14(a).

[28] *Id.*

[29] *Calvert Cliffs' v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1128 (D.C. Cir. 1971) (emphasis in original).

[30] *See id.* at 1114.

[31] *Natural Res. Def. Council v. Hodel*, 865 F.2d 288, 294–95 (D.C. Cir. 1988).

[32] *Id.* at 294–95.

[33] *'Ilio'ulaokalani Coalition v. Rumsfeld*, 464 F.3d 1083, 1095 (9th Cir. 2006).

[34] *See, e.g., id.* at 1098; *Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002) (agency violated NEPA when it considered only build and no build alternatives); *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999) (consideration of preferred alternative, alternative nearly identical to the preferred alternative, and a "no action" alternative was improper where agency failed to consider a reasonable alternative that was consistent with its basic policy objectives); *Am. Oceans Campaign v. Daley*, 183 F. Supp. 2d 1, 11–12 (D.D.C. 2000) (agency violated NEPA by considering only its preferred alternative and a "no action" alternative that would maintain the *status quo*).

environmentally destructive proposals and fund only truly innovative and genuinely progressive energy projects.

The FEIS's failure to consider a reasonable range of alternatives flows from DOE's arbitrary definition of "purpose and need." When preparing an EIS, an agency must "briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."[35] The range of alternatives to be considered in an EIS is dictated by this statement of purpose and need.[36] If the purpose and need are defined too narrowly, the agency's consideration of alternatives is artificially constrained, defeating NEPA's fundamental aim to identify workable alternatives in time to avoid environmental harm.[37]

Here, DOE allowed an applicant's proposal to define the purpose and need of its action and thus to preempt consideration of any range of alternatives. Specifically, DOE defined the purpose of its proposed action as follows: "to demonstrate the feasibility of [Mississippi Power's] selected IGCC technology at a size that would be attractive to utilities for commercial operation." FEIS at 1-6. With this narrow definition, DOE effectively ensured that construction of the Project as proposed by Mississippi Power would afford the only means of achieving the stated purpose and need in the FEIS. In precluding the consideration of alternatives that were not expressly designed to showcase a technology developed by Mississippi Power's parent company, DOE violated NEPA and its implementing regulations.[38]

RUS need not be constrained by DOE's unreasonably narrow definition of the purpose and need of the proposed action. The Rural Electrification Act of 1936 grants RUS broad authority as to the projects it may finance. RUS is empowered to make loans "for the purpose of furnishing and improving electric . . . service in rural areas . . . and for the purpose of assisting electric borrowers to implement demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems."[39] Thus, in order to satisfy NEPA's requirement that it consider a reasonable range of alternatives, RUS must evaluate the possibility of investing its limited resources in other, more environmentally preferable projects.

Predetermining which projects should receive the full backing of taxpayer dollars before the NEPA process begins necessarily precludes any meaningful analysis of alternatives.

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[35] 40 C.F.R. § 1502.13.

[36] *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991) ("The goals of an action delimit the universe of the action's reasonable alternatives.").

[37] *See id.* at 196 ("[A]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality."); *see also Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 666 (7th Cir. 1997) (an agency may not contrive a purpose so slender as to exclude reasonable alternatives from consideration).

[38] *See* 40 C.F.R. §§ 1502.13, 1502.14.

[39] 7 U.S.C. § 902.

Essentially, the FEIS asks that the affected public simply trust that NEPA's obligations were fulfilled during a confidential vetting process. But NEPA mandates disclosure of environmental analysis so that public comment can inform major decisions affecting the environment and so that federal decisionmakers are accountable for the environmental implications of their actions. As explained by the Supreme Court, "NEPA has twin aims. First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process."[40] The nontransparent, non-reviewable alternatives analysis offered in the FEIS turns NEPA on its head and further ignores governing DOE regulations, which expressly require compliance with NEPA's implementing regulations regardless whether DOE has undertaken an environmental critique.[41]

III. Conclusion

RUS has recognized that an EIS for an electricity generation project that receives federal financing should "analyze[] the need for additional capacity and alternatives to the proposed project and include[] consideration of renewable energy, energy efficiency measures, purchasing power from other sources and alternative fuel sources."[42] Given the broad purpose of the Rural Electrification Program, an EIS examining a proposal by RUS to provide financial assistance to an electric generation project must demonstrate a full vetting of available environmentally preferable alternatives. DOE's FEIS fails to satisfy these requirements. It fails to analyze the need for the additional capacity to be generated by the Project. It fails to consider any alternative other than the Mississippi Power's proposal. It fails to consider renewable energy, energy efficiency measures, or alternative power or fuel sources. In light of these failures, RUS cannot demonstrate that DOE's FEIS is adequate and, thus, cannot adopt the FEIS in support of its own funding proposal.

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[40] *Baltimore Gas and Elec. Co. v. Natural Resources Defense Council,* 462 U.S. 87, 98 (1983) (internal quotations and citations omitted).

[41] *See* 10 C.F.R. § 1021.216(i) ("If an EA or EIS is required, DOE shall prepare, consider and publish the EA or EIS in conformance with the CEQ Regulations and other provisions of this part before taking any action pursuant to the contract or award of financial assistance.").

[42] Moratorium Letter at 2.

Thank you again for the opportunity to comment. If you have any questions regarding these comments, please do not hesitate to contact undersigned counsel.

Sincerely,

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