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A Lawsuit Challenges the Tennessee Valley Authority's New Program of 'Never-Ending' Contracts

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Editor's note: This story has been updated to reflect an announcement on Wednesday by Memphis Light, Gas and Water regarding its relationship to the TVA.

A fight over how the nation's largest public utility sells electricity to its customers across seven southern states entered a new phase this week when the Southern Environmental Law Center took the Tennessee Valley Authority to court over provisions of its new long-term power contracts.

Last August TVA began [pressuring](#) municipal power companies serving cities like Nashville, Knoxville and Chattanooga into signing new contracts that, unlike

previous ones, would prevent them from ever again negotiating with TVA for cheaper, cleaner electricity, the lawsuit claims in federal court in Memphis.

TVA has already locked 141 of its 154 local retail electricity distributors into the contracts across its territory, where it provides electricity to 10 million people. Created to lift the Tennessee Valley out of the Great Depression, the utility has a monopoly on supplying electricity in Tennessee and parts of Kentucky, Alabama, Georgia, Mississippi, North Carolina and Virginia.

The lawsuit, filed Monday, takes aim at the TVA's monopoly status and says that the new contracts renew automatically and require a 20-year notice to terminate, effectively making them "never-ending." As such, they run afoul of the 1933 law that created TVA and limited its monopoly power, according to the lawsuit, which was filed on behalf of three southeastern groups that advocate for cleaner energy—Protect Our Aquifer, Energy Alabama and Appalachian Voices.

The legal challenge also claims that TVA failed to analyze and disclose the consequences of its program establishing the new contracts, and consider alternatives, as required by the National Environmental Policy Act. NEPA is the law that President Trump in July

[proposed](#) weakening by shortening and limiting environmental reviews.

"TVA is public power. It's a federal utility," said Amanda Garcia, Southern Environmental Law Center's Tennessee office director. "All of its distributors are public power. The fact that they didn't do any NEPA (process) shows that the public's interest was left entirely out of this monumental decision for public power."

The result will be that TVA gets to "stamp out any competition for the next century," said Garcia. "These never-ending contracts threaten to prevent local distributors from ever renegotiating their contract with TVA, let alone consider leaving the utility if it continues to lag behind in transitioning towards cheaper, cleaner renewable energy."

TVA spokesman Scott Brooks responded that the contracts are long-term partnerships developed at the request of its local power company partners. They are "completely voluntary" agreements that provide their customers an annual 3.1 percent discount on wholesale power rates, as well as the flexibility to self-generate a portion of their own power, primarily through renewable energy, Brooks said.

The contracts allow local utilities to develop up to 5

percent of their electricity from other sources, such as solar power—an amount that critics have said is woefully inadequate to meet the challenge of climate change.

Brooks declined further comment.

Previously, TVA contracts were much shorter, in the seven-year range, offering periodic opportunities for local utilities to revisit contract terms with TVA or seek cheaper, cleaner power elsewhere, according to the lawsuit.

Some of those local utilities would practically find breaking away from TVA costly and difficult because TVA also controls the transmission system in its territory.

Last year, local power providers in some communities [pressed](#) for access to more renewable electricity. In cities like Nashville and Knoxville, mayors had pledged to support the emissions-cutting goals of the Paris climate agreement but found themselves at the mercy of TVA.

Memphis, which is TVA's largest customer and located on the perimeter of its transmission system, threatened to break away, as it looked at alternative power suppliers and energy mixes.

The lawsuit cited a TVA power supply document that shows the utility only had 3 percent wind and solar

power in its portfolio in 2019, while coal and gas provided 45 percent of its power. Hydropower supplied 11 percent and nuclear 39 percent of TVA's energy mix, according to the lawsuit.

While some environmentalists urge TVA to move away from nuclear power, TVA likes to point to its overall "carbon-free" power supply, which includes nuclear and hydroelectric. It expects its carbon-free electricity to increase from 56 percent of its generation this year to 61 percent by 2030.

Eventually, power providers in Nashville, Knoxville and Chattanooga, after raising questions about the new contracts, agreed to sign them. But the utility in Memphis continues to study whether it should breakaway, and in recent weeks, TVA has been sweetening the pot with financial incentives for the city-owned utility there. On Wednesday, J.T. Young, president and CEO of Memphis Light, Gas and Water, said the utility would go on the open market to seek power supply bids to test a study that found it could save on average \$122 million a year for 20 years if it broke away from TVA.

"These types of decisions do not need to be made hastily," Young told his board. "They have long term implications."

The lawsuit filed by the Southern Environmental Law Center asks that the long-term contracts be set aside and that TVA go through a NEPA process before offering them again. The lawsuit also asked for the recovery of the plaintiff's attorney fees and costs.