

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

APPALACHIAN VOICES; CENTER FOR BIOLOGICAL
DIVERSITY; SIERRA CLUB,

Plaintiffs-Appellees,

v.

TENNESSEE VALLEY AUTHORITY,

Defendant-Appellant.

No. 26-5836

On Emergency Motion for Stay Pending Appeal.

United States District Court for the Eastern District of Tennessee at Knoxville.

No. 3:24-cv-00411—Curtis L. Collier, District Judge.

Decided and Filed: October 16, 2026

Before: McKEAGUE, THAPAR, and MURPHY, Circuit Judges.

COUNSEL

ON MOTION FOR STAY and REPLY: Beau Carter, BAKER BOTTS L.L.P., Houston, Texas, Nash E. Long, BAKER BOTTS L.L.P., Washington, D.C., Maria V. Gillen, F. Regina Koho, Lane E. McCarty, TENNESSEE VALLEY AUTHORITY, Knoxville, Tennessee, for Appellant. **ON RESPONSE:** O.W. “Trey” Bussey, Delaney King, Jacqueline Hughwood, SOUTHERN ENVIRONMENTAL LAW CENTER, Nashville, Tennessee, Gregory Buppert, Elizabeth Putfark, SOUTHERN ENVIRONMENTAL LAW CENTER, Charlottesville, Virginia, for Appellees. **ON BRIEF:** Jeremy C. Marwell, VINSON & ELKINS LLP, Washington, D.C., for Amicus Curiae.

OPINION

MURPHY, Circuit Judge. The Tennessee Valley Authority (TVA) supplies electricity to over 10 million customers in several southern States. TVA is in the middle of replacing an aging

coal-fired plant in Tennessee with a new multibillion-dollar gas-fired plant. It began planning the project in 2021, broke ground in 2024, and aims to complete construction by 2028. But three conservation groups sued TVA to halt the project six months after construction began. They did not seek a preliminary injunction, so some two more years passed with concurrent construction and litigation. Eventually, the district court granted summary judgment to the conservation groups. The court vacated TVA's decision authorizing the plant on the ground that it violated the National Environmental Policy Act (NEPA). TVA has appealed that judgment. It now seeks a stay pending appeal to allow it to continue construction on the plant while we review this matter. We grant TVA's motion to stay.

I

In 1933, Congress established TVA to develop “a system of navigation and flood control” by building “dams on the Tennessee River and its tributaries.” *Tenn. Elec. Power Co. v. Tenn. Valley Auth.*, 306 U.S. 118, 127 & n.1 (1939). Congress also expected TVA to “sell the power created by the dams.” *Id.* A “wholly owned public corporation of the United States,” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 157 (1978), TVA is now the nation's largest public power provider, operating around 60 power plants, *see Thacker v. Tenn. Valley Auth.*, 587 U.S. 218, 220 (2019).

This case involves TVA's Kingston plant, a 1950s facility in Harriman, Tennessee. *See* Environmental Impact Statement for Kingston Fossil Plant Retirement, 86 Fed. Reg. 31780, 31780 (June 15, 2021). Kingston is a “nine-unit, coal-fired steam-generating plant.” *Id.* In 2019, TVA began exploring whether to retire its coal-powered fleet, including the Kingston units. *See id.* At the time, TVA's coal fleet was “among the oldest in the nation.” Kingston Fossil Plant Retirement Environmental Impact Statement, 89 Fed. Reg. 24557, 24558 (Apr. 8, 2024). The agency worried about the fleet's reliability and pollution. *See id.* After considering the ongoing “failures” at Kingston, TVA proposed to retire three of its “units as early as 2026, but no later than 2031, and the remaining six units as early as 2027, but no later than 2033.” 86 Fed. Reg. at 31781.

In 2021, TVA issued a notice of intent explaining that it would prepare an Environmental Impact Statement or “EIS” about the retirement and replacement of its Kingston units. *Id.* at 31780. TVA found that it needed at least 1,500 megawatts of new power to replace these units. *See* 89 Fed. Reg. at 24558. Its notice listed several alternatives, including that it take no action and continue to operate the Kingston coal-fired units with updates, that it construct and operate a gas-powered plant at the Kingston site or a different location, and that it retire the Kingston coal-fired units and construct and operate solar facilities instead. *See* 86 Fed. Reg. at 31781.

TVA issued a draft EIS in May 2023. It identified a gas plant at Kingston as TVA’s preferred option. This option required TVA to obtain a reliable gas supply, something that might take years. In August 2021, therefore, TVA executed a “Precedent Agreement” with East Tennessee Natural Gas, LLC. This agreement contemplated that—if the parties met various conditions—East Tennessee Natural Gas would supply the gas required to meet the new plant’s large energy needs.

TVA published its final EIS in February 2024. The final EIS identified TVA’s stated purpose and need as the retirement of the Kingston coal-fired units by 2027 and their replacement with 1,500 megawatts of reliable new generation. In line with TVA’s initial notice, the final EIS identified three options that TVA could pursue: (1) a “No Action Alternative” that would continue to operate updated coal-powered units; (2) TVA’s preferred alternative that would construct and operate a gas plant with a 122-mile gas pipeline built by East Tennessee Natural Gas; and (3) a third alternative that would construct and operate multiple solar generation and energy storage facilities. TVA, *Kingston Fossil Plant Retirement Final Environmental Impact Statement* 33 (Feb. 2024) (Final EIS). TVA found that the gas plant best met the project’s goals because it would satisfy the agency’s “need for flexible, fast-ramping generation in commercial operation by the end of 2027.” *Id.* at 102. The solar alternative, by contrast, could not be completed by 2027 and would have reliability concerns even when completed.

TVA issued its Record of Decision choosing the gas plant in April 2024. 89 Fed. Reg. at 24557–58. The agency began construction the same month. It estimates that the project will cost about \$2.5 billion.

Six months later, three conservation groups—Appalachian Voices, Center for Biological Diversity, and Sierra Club (which we will collectively call the “Conservation Groups”)—sued to halt the Kingston project alleging TVA violated NEPA when issuing its EIS and Record of Decision. The Conservation Groups asserted four theories. First, they alleged that TVA violated NEPA by not considering enough alternatives to a gas plant. Second, they argued that TVA had not taken the required “hard look” at this plant’s environmental effects. Third, they asserted that TVA had unlawfully precommitted itself to the plant before issuing its final decision. And fourth, they claimed that TVA arbitrarily found that the plant was the cheapest alternative. The Conservation Groups asked the district court to vacate TVA’s EIS and Record of Decision under the Administrative Procedure Act (APA), compel TVA to issue new decisions that complied with NEPA, and enjoin further construction in the interim.

Yet the Conservation Groups never sought a preliminary injunction. So the Kingston project has continued throughout the two-year life of this case. Due to supply-chain issues, TVA now estimates that it cannot complete the project before December 2028. It is about half finished.

In early 2026, both sides moved for summary judgment. Ultimately, the district court sided with TVA on two claims and with the Conservation Groups on two others. To start, it found that TVA met NEPA’s hard-look requirement. It rejected the Conservation Groups’ arguments that TVA failed to adequately consider the gas plant’s methane emissions or various international and federal emissions goals. Next, the court held that TVA had not acted arbitrarily when undertaking its “least-cost planning program” and concluding that the gas plant represented the cheapest option.

That said, the court found two NEPA violations. As for the first violation, NEPA requires an agency to consider “a reasonable range of alternatives to the proposed agency action . . . that are technically and economically feasible, and meet the purpose and need of the proposal[.]” 42 U.S.C. § 4332(2)(C)(iii). The district court read this language as requiring agencies to consider at least *two* alternatives that satisfy the relevant criteria—namely, that they be feasible and consistent with the proposal’s purpose and need. Turning to this case, the court explained that only the gas-plant proposal (not TVA’s other two alternatives) met these criteria.

The court thus concluded that TVA had violated this NEPA requirement because it considered only one valid alternative rather than a “range” of them. *Id.*

As for the second violation, the district court interpreted NEPA as preventing agencies from precommitting to their preferred alternative before completing the required environmental analysis. And the court found that TVA had unlawfully precommitted to the gas plant in its Precedent Agreement with East Tennessee Natural Gas. It interpreted this agreement as compelling TVA to build the gas plant no matter what the NEPA review disclosed. And this precommitment stopped TVA “from taking the requisite ‘hard look’ at the environmental consequences of its actions.” *Op.*, R.67, PageID 1228.

Having found these NEPA violations, the court considered the proper relief. The court saw “no basis for a remand-without-vacatur remedy” because TVA made more than a “technical error” in its NEPA analysis. *Id.* at 1248. It thus vacated the EIS and Record of Decision.

TVA immediately sought to overturn this vacatur order. It first asked the district court to stay the order on an expedited basis. After its stay motion remained pending for 17 days, TVA appealed and renewed its stay request with us. We granted an administrative stay to allow the parties to complete their briefing on TVA’s motion to stay pending appeal.

II

Even if vacatur formally differs from an injunction, the parties agree that the district court’s vacatur order functionally requires TVA to stop construction. So both sides invoke the factors that govern a stay of an injunction when analyzing TVA’s request for a stay of the vacatur order. Their agreement allows us to assume that the same factors apply in both contexts. These factors require us to ask four questions. *See OPAWL – Building AAPI Feminist Leadership v. Yost*, 118 F.4th 770, 774 (6th Cir. 2024). First, has “the stay applicant” “made a strong showing that [it] is likely to succeed on the merits”? *Id.* (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). Second, will the applicant “be irreparably injured absent a stay”? *Id.* Third, will the “issuance of the stay” “substantially injure the other parties interested in the proceeding”? *Id.* And fourth, which side does “the public interest” favor? *Id.* Although these questions resemble those that courts ask when deciding whether to grant an injunction in the first

place, a party seeking a stay “faces a lower burden” than a party seeking an injunction. *Id.* That is because we are not considering whether to change the prelitigation status quo but instead whether to allow the district court’s proposed change to that status quo to continue. *See id.* TVA has met this lower burden here.

A. Likelihood of Success on the Merits

TVA likely has the better of the arguments on the merits. At the outset, though, the parties have yet to brief the Conservation Groups’ Article III standing. To establish standing, they must prove that they suffered a cognizable injury caused by TVA and redressable by their requested relief. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). And they must satisfy this test “for each claim that they press” on appeal. *Id.* at 431. Yet we remain unsure how the Conservation Groups satisfy all these elements for their two successful claims. For example, although the district court held that TVA did not consider enough alternatives, the Conservation Groups have not identified any alternative that would redress their injury. So it seems a bit speculative to suggest that any injury is traceable to TVA not considering unknown alternatives. *Cf. Klein v. U.S. Dep’t of Energy*, 753 F.3d 576, 579–80 (6th Cir. 2014). Nevertheless, we can bypass this issue at this time. Although we would have to consider standing before affirming the grant of relief, we need not address it now because we find a stay appropriate on the merits alone. *See Mullin v. Doe*, 609 U.S. 324, 346 (2026) (plurality opinion); *Arizona v. Biden*, 31 F.4th 469, 479 (6th Cir. 2022).

TVA will likely succeed for three reasons. The district court misread the phrase “range of alternatives” in NEPA. It misread TVA’s Precedent Agreement with East Tennessee Natural Gas as precommitting the agency to the gas plant. And it wrongly ordered a vacatur remedy.

1. “Range of Alternatives” to the Gas Plant

The district court likely misunderstood the NEPA rule requiring agencies to address alternatives to their proposed action. The statutory language requires an EIS to contain a “detailed statement” considering “a *reasonable range of alternatives* to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and

economically feasible, and meet *the purpose and need of the proposal.*” 42 U.S.C. § 4332(2)(C)(iii) (emphases added).

Here, the district court first upheld TVA’s definition of its “purpose and need” for the proposed action. Op., R.67, PageID 1209–10. As for its purpose, TVA sought to “decommission all nine of the existing [Kingston] coal-fired units” and replace them with “at least 1,500” megawatts of new power “by the time the units are retired.” Final EIS, at 3. As for its need, TVA sought to ensure that it had enough supply to reliably meet “peak capacity demands” after it retired the coal-fired units. *Id.* But the district court then read § 4332(2)(C)(iii)’s text as requiring TVA to “consider multiple alternatives (more than one)” that satisfy these goals. Op., R.67, PageID 1213. And the court found that TVA violated this requirement because the agency “did not study any alternatives” (other than the gas plant) that met its purpose and need. *Id.*, PageID 1215. On appeal, however, nobody disputes that only the gas plant—and no known alternative such as the solar option—would meet TVA’s purpose and need. In essence, then, the district court read the text to require an agency to consider two qualifying alternatives even when *only* one exists.

This interpretation likely misreads NEPA. Start with the text. The district court asserted that the word “range” always requires two of something because it invoked the following definition: “a series of things in a line.” *Id.*, PageID 1211 (quoting *Range*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/range>). But the word “range” itself has a range of meanings. And we doubt the court picked the right one. The word also means “[t]he area or extent which a particular concept or thing covers or includes” or, in other words, “the scope of something.” *Range*, Oxford English Dictionary Online (last visited Oct. 16, 2026) (definition IV.14.a); *see also, e.g., Range*, American Heritage College Dictionary 1131 (3d ed. 2000) (“The full extent covered[.]”). In that respect, a general concept can have such a narrow “scope” that it includes just one item. If, for example, an out-of-towner asked a resident about the “range of restaurants” that were located in a certain part of town, served only certain types of food, and charged only budget-friendly prices, the visitor might be unsurprised to learn that only one restaurant fit the bill.

Notably, this definition better matches the use of “range” in NEPA. The statute does not ask about a series of alternatives along a line from, say, most expensive to least. It asks about the number of alternatives that satisfy the same criteria: that they be “technically and economically feasible” and “meet the purpose and need of the proposal.” 42 U.S.C. § 4332(2)(C)(iii). So if only one “feasible” proposal met an agency’s “purpose and need,” it would represent the “range of alternatives” under the ordinary understanding of these words. *Id.* Indeed, everyone seems to agree that TVA had “no obligation to include” an alternative in its EIS that “would not ‘bring about the ends of the federal action.’” *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 75 (D.C. Cir. 2011) (citation omitted); see *Gas Transmission Nw., L.L.C. v. Fed. Energy Regul. Comm’n*, 157 F.4th 674, 709 (5th Cir. 2025); *HonoluluTraffic.com v. Fed. Transit Admin.*, 742 F.3d 1222, 1231 (9th Cir. 2014). In short, nothing in the text compelled the district court’s reading.

The Dictionary Act all but confirms this conclusion. It tells us that “words importing the plural include the singular” unless “the context indicates otherwise.” 1 U.S.C. § 1. Nothing indicates otherwise here. The “range of alternatives” can include a single “alternative[]” when no other options meet the specified criteria. 42 U.S.C. § 4332(2)(C)(iii).

True, courts must exercise care to ensure that agencies do not undercut NEPA by narrowly defining the “purpose and need” of their proposal. See *Sierra Club v. Fed. Energy Regul. Comm’n*, 145 F.4th 74, 87–88 (D.C. Cir. 2025). As Judge Walker explained, “[b]ecause objectives limit alternatives, the more specific the objective, the narrower the range of alternatives.” *Id.* So, as then-Judge Thomas further warned, if an agency “define[s] the objectives of its action in terms so unreasonably narrow that only one alternative . . . would accomplish the goals of [its] action, . . . the [NEPA analysis] would become a foreordained formality.” *Id.* at 88 (quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991) (Thomas, J.)). But the district court held that TVA reasonably defined its purpose and need. So this manipulation concern does not matter here.

The broader context confirms our reading. “NEPA is a purely procedural statute that, as relevant here, simply requires an agency to prepare an EIS—in essence, a report.” *Seven Cnty. Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 173 (2025). But the district court’s reading

would have NEPA put up a “substantive roadblock” to certain agency actions. *Id.* Whenever the lawfully identified purpose and need of an agency’s proposal allow for just one option, NEPA would *prohibit* that action because the agency could never consider two alternatives. But Congress did not design NEPA to “paralyze” agencies in this way. *Id.*

Precedent points the same way. As the Eleventh Circuit put it, “NEPA does not impose any minimum number of alternatives that must be evaluated.” *Citizens for Smart Growth v. Sec’y of Dep’t of Transp.*, 669 F.3d 1203, 1212 (11th Cir. 2012). Or as the D.C. Circuit added, there may be “only one feasible alternative” if the agency reasonably identifies a narrow purpose and need. *Sierra Club*, 145 F.4th at 87–88. Indeed, the district court admitted that many courts had upheld agency actions that considered only a “no-action alternative” along with an agency’s preferred alternative. *Op.*, R.67, PageID 1212; *see City of North Miami v. Fed. Aviation Admin.*, 47 F.4th 1257, 1268 (11th Cir. 2022); *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1249 (9th Cir. 2005); *Airport Neighbors All., Inc. v. United States*, 90 F.3d 426, 431–32 (10th Cir. 1996); *Citizens Against Burlington*, 938 F.2d at 196–98. Yet TVA considered even more options here.

The district court pointed to a recent amendment from 2023 to explain the lack of precedent supporting its interpretation. Before the amendment, NEPA required agencies to consider “alternatives to the proposed action.” *Seven Cnty.*, 605 U.S. at 178 n.1 (quoting 42 U.S.C. § 4332(2)(C)(iii) (2018)). Now, it requires agencies to consider a “reasonable range of alternatives” that satisfy the identified criteria. 42 U.S.C. § 4332(2)(C)(iii). The district court reasoned that Congress added both the word “range” and the command that the alternatives “meet the purpose and need of the proposal” to impose “new requirements” on agencies. *Op.*, R.67, PageID 1213. Yet one might find it surprising that a law named the “Building United States Infrastructure through Limited Delays and Efficient Reviews Act” (or the “BUILDER Act” for short) would impose *more* procedural hoops. *Seven Cnty.*, 605 U.S. at 181 n.3. If anything, the amendments constrict the alternatives that agencies must consider. The new text makes clear that—instead of potentially having to consider all “alternatives”—agencies need only consider those alternatives that are feasible and consistent with their goals. So the change cannot justify a two-alternative minimum that did not exist before.

In the end, NEPA requires agencies to consider only “viable” options; they can disregard options that are “[in]feasible, ineffective, or inconsistent” with their goals. *N. Cascades Conservation Council v. U.S. Forest Serv.*, 136 F.4th 816, 827 (9th Cir. 2025). And neither the district court nor the Conservation Groups identified *any* “viable” option other than the gas plant. *Id.* So TVA likely will succeed on its claim that it considered enough alternatives.

2. Precommitment

The district court also likely misunderstood TVA’s Precedent Agreement with East Tennessee Natural Gas when finding a second NEPA violation. The court’s reasoning had two steps. It first interpreted NEPA as barring an agency from making a “[p]recommitment” that would compel it to adopt an option before it completed its environmental review. *Op.*, R.67, PageID 1220. The court then held that TVA made this precommitment because the agency would have breached the Precedent Agreement if it chose anything but the gas plant. *Id.*, PageID 1223–25.

As an initial matter, we do not know where this “precommitment” prohibition comes from. The parties’ stay briefs do not cite any statutory provision that bans agency “precommitments” or “predeterminations.” Some of their cited cases once grounded this requirement in regulations issued by the Council on Environmental Quality. *See, e.g., Burkholder v. Peters*, 58 F. App’x 94, 96–97 (6th Cir. 2003); *Save the Yaak Comm. v. Block*, 840 F.2d 714, 718 (9th Cir. 1988). But the D.C. Circuit recently held that these regulations were “*ultra vires*” because the Council lacked the power to issue them. *Marin Audubon Soc’y v. Fed. Aviation Admin.*, 121 F.4th 902, 908–15 (D.C. Cir. 2024). Besides, the Council has now rescinded them. *See* CEQ Removal of National Environmental Policy Act Implementing Regulations Final Rule, 90 Fed. Reg. 10610 (Feb. 25, 2025).

Perhaps we could instead ground this “precommitment” prohibition in the NEPA provision commanding agencies to “take a ‘hard look’ at environmental consequences” when drafting an EIS. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (citation modified); *see* 42 U.S.C. § 4332(2)(C). One might call an agency’s hard look at a project’s environmental effects “arbitrary” (in violation of the APA) if the agency made up its

mind before even examining these effects. 5 U.S.C. § 706(2)(A); *Forest Guardians v. U.S. Fish & Wildlife Serv.*, 611 F.3d 692, 719 (10th Cir. 2010) (Gorsuch, J., concurring). Still, this theory runs into its own problems. Recall that the district court *rejected* the Conservation Groups' claim that TVA's EIS failed to take a hard look at the environmental effects. Op., R.67, PageID 1215–18. This conclusion would suggest that any early precommitment “was essentially harmless” because it did not undermine the agency's later evaluation of the environmental effects. *Burkholder*, 58 F. App'x at 98.

All this said, we can save this claim's legal foundation for another day. Even if some precommitments violate NEPA (or the APA), TVA will likely show that it made no forbidden precommitment. The Conservation Groups must meet a “high standard” to prove this type of claim. *Forest Guardians*, 611 F.3d at 714. NEPA allows agencies to have a preferred alternative when conducting an environmental review. *See id.* at 712. They just may not “irreversibly and irretrievably” commit to this preferred alternative before completing their EIS. *Id.* at 714. So while one court has held that agencies may spend resources planning for a preferred alternative before completing an environmental review, *see Nat'l Audubon Soc'y v. Dep't of the Navy*, 422 F.3d 174, 205 (4th Cir. 2005), another court has said that agencies go too far if they begin “construction” on the alternative before that time, *Save the Yaak*, 840 F.2d at 718.

This case likely falls on the permissible planning side of the line. Yes, TVA entered a “Precedent Agreement” with East Tennessee Natural Gas in August 2021 before it issued its final decision in April 2024. The agency did so because a gas plant would need a large, reliable supply of natural gas, which would take years to procure. East Tennessee Natural Gas had to “obtain from FERC a ‘certificate of public convenience and necessity’ before” it could build the pipeline required for the gas plant. *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 302 (1988) (quoting 15 U.S.C. § 717f(c)(1)(A)). And precedent agreements are “preconstruction contracts” between gas “shippers” (here, TVA) and a gas “transport[er]” (here, East Tennessee Natural Gas). *Env't Def. Fund v. Fed. Energy Regul. Comm'n*, 2 F.4th 953, 959 (D.C. Cir. 2021). They are “important evidence” for FERC that sufficient demand exists for the pipeline. *Id.* at 972 (citation modified).

At the same time, the Precedent Agreement had exit ramps if TVA opted against the gas plant and thus did not “irreversibly” commit it to that plant. *Forest Guardians*, 611 F.3d at 714. The agreement made the parties’ duties “subject to satisfaction” of various “conditions precedent.” Agreement, R.44-2, PageID 726–29. The well-established phrase “condition precedent” covers something that “must happen before either party becomes bound by the contract.” *Jones v. United States*, 96 U.S. 24, 28 (1877); 13 Williston on Contracts § 38:7 (4th ed.), Westlaw (database updated May 2026). Among other conditions, TVA did not need to perform unless it completed all “environmental reviews and required agency consultations *for the construction of the Kingston Project* in order to meet requirements under” NEPA and other statutes. Agreement, R.44-2, PageID 728–29 (emphasis added). This paragraph also listed TVA’s “issuance of the Record of Decision in order to meet requirements under” NEPA as another condition. *Id.*, PageID 729. Elsewhere, the Precedent Agreement defined the “Kingston Project” as TVA’s “proposed project to install gas-fired capability” at Kingston. *Id.*, PageID 718. In plain English, then, if TVA’s NEPA analysis led it to disqualify the gas plant, it could get out of the agreement.

The Conservation Groups respond with a lawyerly argument that convinced the district court but leaves us unpersuaded. As the district court saw things, this condition precedent required TVA to have “complet[ed]” the NEPA review—not to have chosen the gas plant after that review. Op., R.67, PageID 1225–27. And it required TVA to have issued “*any*” Record of Decision, not a Record of Decision choosing the gas plant. *Id.*, PageID 1226. Under this view, if TVA chose the solar option in a Record of Decision, it would remain bound to an agreement for a supply of (unnecessary) gas.

This reading, while perhaps plausible as a literal matter, fails to persuade. Of most note, “[w]here the parties have attached the same meaning to a promise or agreement or a term thereof,” courts generally “interpret[]” it “in accordance with that meaning.” Restatement (Second) of Contracts § 201(1) (A.L.I. 1981); see *Russell v. Citigroup, Inc.*, 748 F.3d 677, 680–81 (6th Cir. 2014); *In re AmTrust Fin. Corp.*, 694 F.3d 741, 756 (6th Cir. 2012). And here, both TVA and East Tennessee Natural Gas read this condition precedent as permitting TVA to get out of the agreement if it did not choose the gas plant. As East Tennessee Natural Gas says in its

amicus brief, the condition “would be satisfied only by a [Record of Decision] electing to pursue the gas-fired plant.” Amicus Br., at 10. Indeed, the natural gas company reiterated this view to FERC when seeking its approval for the pipeline. *Id.* at 8–9. We would violate basic contract-law rules if we allowed the Conservation Groups’ *third-party* reading to trump the reading that the *two contracting parties* gave the condition precedent. After all, “[t]he objective of interpretation in the general law of contracts is to carry out the understanding of the parties rather than to impose obligations on them contrary to their understanding.” Restatement (Second) of Contracts § 201 cmt. c.

Admittedly, there may be some debate over whether this mutual understanding can supersede the objective meaning of a contract’s words when the two conflict. *Cf.* 11 Williston on Contracts, *supra*, §§ 31:13–:14. But we need not enter that debate. The words leave room for the parties’ shared understanding. The contract requires the “completion” of a NEPA review “for the construction of the” gas plant. Agreement, R.44-2, PageID 728 (emphasis added). One might reasonably say that a hypothetical NEPA review preferring *solar* was not one “for” the *gas plant*. So such a NEPA review would not satisfy this condition. This text is at least ambiguous, and the parties’ shared view would resolve that ambiguity. *See AmTrust*, 694 F.3d at 750.

Removing all doubt, the parties’ view better fits the contract “as a whole.” *Diversified Energy, Inc. v. Tenn. Valley Auth.*, 223 F.3d 328, 339 (6th Cir. 2000); 11 Williston on Contracts, *supra*, § 32:5. The parties agreed to this contract so that TVA could have a reliable supply of gas if it moved forward with its gas plant. So it makes sense to read the contract as dissolving if TVA chose another option. Under the district court’s view, by contrast, TVA bound itself to an agreement for the supply of gas even if it opted to use solar power. Yet why would the parties enter a contract for a 122-mile pipeline to nowhere? In addition, the contract was only preliminary. It made clear that the parties had to enter a separate “Service Agreement” and “Negotiated Rate Agreement” for any exchange of gas down the road. Agreement, R.44-2, PageID 718–19, 728. It also gave TVA’s “Board of Directors” the “sole and absolute discretion” to decide whether to approve these later agreements, and it made the Board’s “approval” of them another condition precedent. *Id.*, PageID 728. So if TVA chose the solar option, it could have voided the Precedent Agreement under this additional condition precedent: its Board would

simply exercise its “discretion” to refuse to approve the later agreements. *Id.* All told, the district court likely read the contract out of context to defeat (rather than implement) the parties’ expectations.

3. Remand Without Vacatur

Lastly, TVA likely will still prevail even if we are wrong on these two legal points because the district court may well have chosen the wrong remedy. The APA tells courts to “hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). The D.C. Circuit has long read this text to allow courts to remand to an agency for more analysis without vacating a challenged order. *See Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm’n*, 988 F.2d 146, 150–51 (D.C. Cir. 1993). Although we have yet to take this path, *see Kentucky v. EPA*, 123 F.4th 447, 472 (6th Cir. 2024), this remand-without-vacatur remedy represents settled relief in other circuits. *See Tex. Ass’n of Mfrs. v. Consumer Product Safety Comm’n*, 989 F.3d 368, 389 (5th Cir. 2021); *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng’rs*, 781 F.3d 1271, 1290 (11th Cir. 2015); *Prometheus Radio Project v. FCC*, 824 F.3d 33, 52 (3d Cir. 2016); *Nat. Res. Def. Council, Inc. v. EPA*, 808 F.3d 556, 584 (2d Cir. 2015); *Cent. Me. Power Co. v. Fed. Energy Regul. Comm’n*, 252 F.3d 34, 48 (1st Cir. 2001). If vacatur amounts to an injunction by another name, this remedy also might fall within the traditional “discretion” that courts held in equity. *See Kentucky*, 123 F.4th at 478 (Murphy, J., concurring). And most recently, the Supreme Court suggested that the remedy applied to NEPA, explaining that an agency’s procedural “deficiency may not necessarily require a court to vacate the agency’s ultimate approval of a project.” *Seven Cnty.*, 605 U.S. at 185. Because we deal only in likelihoods at this emergency stage, it suffices to hold that the APA likely permits remand without vacatur for NEPA violations.

The question remains whether the errors that the district court identified required vacatur. Courts typically consider two factors when deciding on the proper remedy: the “seriousness” of a mistake and “the disruptive consequences” of vacating a decision. *Allied-Signal*, 988 F.2d at 150–51 (citation modified). Both factors show that the district court likely picked the wrong remedy.

Seriousness of Error. Even if TVA committed NEPA violations, we do not find those violations fatally serious. Because NEPA codifies only “a procedural cross-check,” a deficient EIS does “not necessarily” doom TVA’s project. *Seven Cnty.*, 605 U.S. at 173, 185. Indeed, a court need not “vacate the agency’s ultimate approval of a project” unless it has a “reason to believe that the agency might disapprove the project if it added more to the EIS.” *Id.* at 185. And here, nothing suggests that TVA would “disapprove” the gas plant after more process. *Id.* As for TVA’s failure to identify enough alternatives, neither the district court nor the Conservation Groups could identify any other “viable” alternatives either. *N. Cascades*, 136 F.4th at 826. So what are the chances that TVA will later opt for a *presently unknown* option? As for TVA’s alleged precommitment, it may have already cured this error. Despite that precommitment, the district court still found that TVA undertook the required “hard look” at the end of the day. *Robertson*, 490 U.S. at 350 (citation modified). So what more must it do?

Disruptive Consequences. A vacatur remedy also would impose high costs on TVA and the public. As we explain in the next two sections, a shutdown could cost hundreds of millions of dollars, put thousands of union workers out of work, jeopardize electricity grids across several states, and drive up the public’s utility bills. It is difficult to see how two mere “procedural” hiccups could justify these potentially enormous harms. *Seven Cnty.*, 605 U.S. at 184.

* * *

We doubt that any NEPA error occurred. Regardless, the NEPA errors that the district court identified appear harmless. *See Seven Cnty.*, 605 U.S. at 185. So the district court likely erred by vacating TVA’s decision authorizing the construction of the Kingston gas plant.

B. Irreparable Injury

TVA has also shown that it will likely suffer irreparable harm if forced to halt construction of the half-completed gas plant. This harm includes both lost money and a risk of power outages.

The question whether the expenditure of time and money qualifies as an “irreparable” harm depends on the circumstances. Lost “money, time and energy” generally are not

irreparable when the movant may seek damages as a remedy for these injuries. *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991) (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)). Yet courts do treat these injuries as irreparable if the movant has no avenue to recoup the lost time and money in the event that its position succeeds at the end of the case. *See Nat’l Inst. of Health v. Am. Pub. Health Ass’n*, 145 S. Ct. 2658, 2660 (2025) (mem.); *Dep’t of Educ. v. California*, 604 U.S. 650, 651–52 (2025) (per curiam); *Kentucky v. Biden*, 57 F.4th 545, 556 (6th Cir. 2023); *Texas v. EPA*, 829 F.3d 405, 433–34 (5th Cir. 2016).

The latter rule applies here. A TVA officer who oversees the plant’s construction has opined that a “work stoppage” could increase the \$2.5-billion cost of the plant by 25% (that is, by \$625,000,000). Waldrep Decl., R.71-2, PageID 1283. Among other costs, it took TVA substantial time to hire the 2,000 or so union workers at the plant. If TVA must “release[]” these workers “from the project” because of the vacatur order, it would have to spend time and money rehiring a new group (who would have to proceed through “the same time-consuming clearance procedures”). *Id.*, PageID 1283–84. Its “labor procurement subcontractor” might also “reprice its contract” because TVA would have little bargaining power if it had to quickly rehire a massive work force. *Id.*, PageID 1284. Further, the warranties on the expensive “[g]as turbines, generators, motors and transformers” would continue to run during the stoppage, and this equipment could “deteriorate” more quickly when put to use. *Id.*, PageID 1284–85. Critically, the Conservation Groups make no claim that TVA could “recoup[]” any of these costs. *Nat’l Inst. of Health*, 145 S. Ct. at 2660 (citation modified). Perhaps TVA could shift some costs to its customers in the form of higher utility bills. Even then, it would suffer irreparable injury by losing any “established goodwill” with these customers. *Mich. Bell Tel. Co. v. Engler*, 257 F.3d 587, 599 (6th Cir. 2001). And that cost-shifting merely moves TVA’s irreparable harm to a public-interest harm that still favors relief.

Courts have also recognized that “grid instability” qualifies as an “irreparable injury” given the risk of power outages that such instability can produce. *Texas*, 829 F.3d at 434; *see Kentucky v. EPA*, 2023 WL 11871967, at *4 (6th Cir. July 25, 2023) (order). And another TVA officer opined that an extended delay in obtaining “the generating capacity of the Kingston gas

plant” could create a “high risk of power outages and rolling blackouts” for “the entire TVA territory” at times of peak energy demand. Lowry Decl., R.71-1, PageID 1280. As this officer explained, the gas plant will reduce TVA’s need to make “market purchases” during these high-demand periods—an important attribute because TVA sometimes cannot find enough market supply. *Id.*

The Conservation Groups respond that courts refuse to treat “self-inflicted” harms as irreparable. Stay Resp., at 16 (first citing *California*, 604 U.S. at 652; then citing *Cuomo v. Nuclear Regul. Comm’n*, 772 F.2d 972, 977 (D.C. Cir. 1985); then citing *Towerco 2013, LLC v. Berlin Twp. Bd. of Trs.*, 110 F.4th 870, 888 (6th Cir. 2024); and then citing *Baker v. Adams Cnty. Sch. Bd.*, 310 F.3d 927, 930 (6th Cir. 2002) (per curiam)). They add that TVA inflicted its injuries on itself because it “charged ahead with construction” during the suit. *Id.* at 17. Yet the Conservation Groups did not sue until six months after construction began. And none of their cases supports the claim that a defendant has a duty to cease operations merely because a party has sued it. In *California*, for example, the Court reasoned that the harmed parties could try to recoup lost funds at the end of the suit. *See* 604 U.S. at 652. TVA may not do so here. And in *Cuomo* and *Towerco 2013*, the parties “took a risk” that they would obtain the required licenses or permits. *Cuomo*, 772 F.2d at 977; *see Towerco 2013*, 110 F.4th at 888. Here, by contrast, TVA obtained the required approvals before it started building. And the Conservation Groups take these cases too far by suggesting that TVA needed *judicial* preclearance. Lastly, although *Baker* suggested that “monetary damage” is not irreparable, the court nowhere opined that the defendant lacked the ability to recover for this damage. 310 F.3d at 929–30.

In sum, an invalid judicial injunction or vacatur order can impose the same “compliance costs” that an invalid executive regulation can inflict. *Kentucky*, 57 F.4th at 556. And a party coerced by a regulation, injunction, or vacatur order may not be able to recoup these losses later, making them the kinds of irreparable injuries that render equitable intervention proper. *See id.*

The Conservation Groups next downplay the risk of power outages as “far too speculative” and remote to qualify as irreparable because TVA will not have the new generation from the Kingston gas plant for two-plus years even without any work stoppage. Stay Resp., at 18. Yet we have long recognized that “in the electric power industry, plans must be made for the

determination of power needs from three to five years in advance in order to take care of future loads because of the extended period for the planning and construction of large generating units.” *City of Memphis ex rel. Memphis Light, Gas & Water Div. v. Ford Motor Co.*, 304 F.2d 845, 850 (6th Cir. 1962). TVA cannot instantaneously flip a switch to other generating sources to account for a delayed rollout of the Kingston plant. *See* Lowry Decl., R.71-1, PageID 1280. No better is the Conservation Groups’ claim that TVA can prioritize homeowners by turning the lights off on businesses, including large data centers. It should go without saying that TVA’s inability to supply businesses (not just homeowners) qualifies as an irreparable injury. *See Texas*, 829 F.3d at 434.

C. Balance of Remaining Interests

The final two factors (harm to other parties and the public interest) “merge” where, as here, a government agency is a party. *OPAWL*, 118 F.4th at 785 (quoting *Nken*, 556 U.S. at 435). The balance of these factors leaves no doubt that we should grant a stay. On the one hand, the vacatur order might harm many other people—not just TVA. Consider the 2,000 or so construction workers helping to build the gas plant. Even a short work stoppage would deprive them of “their paychecks,” while a longer one might force them to “find another job.” Waldrep Decl., R.71-2, PageID 1283. And since over half of these workers commute more than 50 miles to the worksite, the stoppage could affect their “housing and travel situations.” *Id.* Likewise, TVA’s customers might indirectly incur the costs of the work stoppage in the form of higher utility bills, power outages, and rolling blackouts. Lowry Decl., R.71-1, PageID 1280. As courts have long recognized, the “unwarranted interruption of power may cause serious and unnecessary economic loss and possibly even loss of life.” *City of Maryville v. Farmer*, 244 F.2d 456, 462 (6th Cir. 1957); *see Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 18 (1978).

On the other hand, the Conservation Groups’ decision to “treat[] this case like any other suit” undercuts their claimed irreparable injuries. *Tenn. Conf. of the NAACP v. Lee*, 105 F.4th 888, 899 (6th Cir. 2024) (per curiam). They did not file their complaint until six months after the construction began. Nor did they seek a preliminary injunction or move to expedite the litigation. They may not have been in a rush because some of their members fear “air pollution

from the Kingston Gas Plant” *once it begins to operate*. Mem., R.42-1, PageID 519. But we will resolve this appeal well before then, so they have no need for judicial relief in the interim. *Cf. Fischer v. Thomas*, 78 F.4th 864, 868 (6th Cir. 2023). The Conservation Groups also point to the affidavit of a woman who allowed East Tennessee Natural Gas to build the pipeline on her property. The ongoing construction has caused “dust, noise, and vibrations.” Smarsh Decl., R.74-1, PageID 1306–07. While we understand her frustration, the Conservation Groups sued only TVA. And TVA has asserted that it has no power to control East Tennessee Natural Gas, a private company that got a separate pipeline approval from FERC. Stay Reply, at 10. So the vacatur order will not cover East Tennessee Natural Gas or redress the distinct harms that its pipeline might cause.

We stay the district court’s vacatur order and judgment pending TVA’s appeal.