

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

DONNA W. SHERWOOD, ET AL.,
Plaintiffs,

v.

No. 3:12-cv-00156

TENNESSEE VALLEY AUTHORITY,
Defendant.

**BRIEF IN SUPPORT OF TVA’S MOTION FOR
JUDGMENT IN PLAINTIFFS’ FAVOR**

There is only one substantive claim remaining in Plaintiffs’ 2012 lawsuit challenging TVA’s vegetation management practices on its transmission line rights-of-way—their claim that TVA violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq., by not preparing and publishing an environmental impact statement (“EIS”) prior to implementing a new policy referred to in this litigation as the “15-foot rule.”¹ The Third Amended Complaint—the operative complaint at this juncture—seeks the following relief based on TVA’s NEPA violation: (1) a declaratory judgment that TVA violated NEPA “by implementing [the 15-foot rule] without preparing and publishing an environmental impact statement as required by NEPA”; (2) an injunction precluding TVA “from further implementing its new 15 foot rule until such time as it prepares and publishes an environmental impact statement in compliance with NEPA or otherwise complies with NEPA”; and (3) an award of “attorney fees under the Equal Access to Justice Act or any other grounds provided by law.” (Doc. 170 at PageID 24490.)

¹ “The new policy, referred to in this litigation as the fifteen-foot rule, requires TVA to cut down all trees within its right of ways that are fifteen-feet tall or have the potential to grow to fifteen feet, whereas TVA right-of-way specialists previously had discretion over which trees to remove.” *Sherwood v. TVA*, 842 F.3d 400, 402 (6th Cir. 2016).

TVA has filed a confession of judgment (Doc. 377) informing the Court and Plaintiffs that it has published notice in the Federal Register that it is preparing, pursuant to NEPA, a programmatic, system-wide EIS of its transmission line right-of-way vegetation maintenance practices. *See* 82 Fed. Reg. 7913-15 (Jan. 23, 2017). One of the alternatives to be studied in that EIS encompasses the level of tree clearing specified by the challenged 15-foot rule. *See id.*

TVA's filing also confesses judgment in Plaintiffs' favor and consents to an entry of judgment: (1) declaring that TVA's implementation of the 15-foot rule violated NEPA because it was a major federal action significantly affecting the quality of the human environment that was not properly studied under NEPA prior to implementation; (2) enjoining TVA from further implementing the 15-foot rule until it prepares and publishes an EIS or otherwise complies with NEPA; and (3) awarding Plaintiffs their reasonable attorney's fees and costs in this litigation related to the NEPA and mootness issues pursuant to the Equal Access to Justice Act. (*Id.*) This is the precise relief requested in the Third Amended Complaint. (Doc. 170 at PageID 24490.)

Because TVA's confession of judgment assents to an award of the relief requested in the Third Amended Complaint for TVA's NEPA violation—the only remaining claim in this litigation—entry of judgment pursuant to Federal Rule of Civil Procedure 58 is proper. *See Thompson v. Kauffman*, 30 F. App'x 440, 442 (6th Cir. 2002) (affirming district court's entry of judgment under Rule 58 following defendant's confession of judgment in plaintiffs' favor because the “confession of judgment resolved the issue of damages [and] no other issues remained to be decided”); *accord Lizarraga Customs Broker v. Bureau of Customs & Border Protection*, 34 C.I.T. 1309 (2010) (entering government's confession of judgment filed in litigation where plaintiff sought declaratory and injunctive relief). TVA therefore respectfully requests that the Court enter judgment in Plaintiffs' favor pursuant to TVA's confession of judgment. A proposed judgment is attached.

CONCLUSION

For the reasons stated and upon the authorities cited above, judgment under Federal Rule of Civil Procedure 58 should be entered in Plaintiffs' favor.

Respectfully submitted,

s/Frances Regina Koho _____

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CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically through the Court's ECF system on the date shown in the document's ECF footer. Notice of this filing will be sent by operation of the Court's ECF system to all parties as indicated on the electronic filing receipt. Parties may access this filing through the Court's ECF system.

s/Frances Regina Koho
Attorney for Tennessee Valley Authority