

June 10, 2002

Mr. Hector M. Alejandro  
Director for Planning and Environmental Protection  
Puerto Rico Electric and Power Authority (PREPA)  
P. O. Box 364267  
San Juan, Puerto Rico 00936-4267

Re: PREPA San Juan Repowering Project

Dear Mr. Alejandro:

The U.S. Environmental Protection Agency's (EPA) Region 2 Office received PREPA's March 27, 2002 letter regarding the San Juan Repowering Project. In your letter, you reference two possible alternatives regarding the future of the San Juan project including: (1) an extension of the 18 month period to construct the project in the existing Prevention of Significant Deterioration (PSD) permit; and (2) installation of a combustion turbine different from the one permitted. As discussed in detail below, if PREPA exercises the first option, it will need to submit a justification for the 18 month extension that complies with certain procedural requirements. Note that a separate request will also need to be submitted to Puerto Rico Environmental Quality Board (EQB) to extend the EQB permit. If PREPA chooses to install different turbines, no extension can be granted for the current permit and you must submit a new permit application and obtain a new PSD permit.

Background:

PREPA applied for a PSD permit for the repowering project in October, 1996. In this permit application, PREPA claimed netting credits for the 1996 retirement of Units 5 and 6, and thereby netted out of review for nitrogen oxide, sulfur dioxide and particulate matter. A final PSD permit was issued in March, 2000 for VOCs and CO. PREPA appealed this final permit and EPA subsequently issued a revised final permit in November, 2000.

Discussion:

Pursuant to the federal PSD regulations at 40 CFR 52.21(r)(2), a PSD permit approval becomes invalid if construction is not commenced within 18 months after receipt of such approval. However, EPA may exercise its discretion to extend the 18 month period "upon a satisfactory showing that an extension is justified." Although PREPA has provided reasons for seeking an extension, it must also demonstrate that there is a reasonable likelihood that the project will go forward and construction will commence in the next 18 months. In addition, PREPA must provide the following information before EPA can grant an extension:

(1) BACT Review -

The permit extension application should reevaluate BACT for VOC and CO to determine if it remains appropriate. If no advancement in control technology has occurred, based on reference to the BACT/LAER clearinghouse and other sources, the original BACT determination would still apply.

(2) Air Quality Review -

The permit extension application should determine whether the increment analysis and air quality analyses remain the same.

(3) Additional PSD Requirements -

PREPA must address any new requirements that might now apply due to the passage of time since the final permit issuance. The permit extension application should therefore include a new BACT and air quality analysis for sulfur dioxide, nitrogen oxide, and particulate matter because the original nonapplicability determination for those pollutants is no longer valid. Further, a revised Environmental Justice analyses reflecting impacts due to additional pollutants and any changes to the impacts of pollutants reviewed earlier will be required. The rationale for this determination is explained below.

Rationale why the emission reductions are no longer contemporaneous/creditable:

Under the federal PSD regulations at 40 CFR 52.21(b)(3)(ii), an increase or decrease in actual emissions is contemporaneous (and therefore creditable) with the increase from the particular change only if it occurs between (a) the date five years before construction on the particular change commences; and (b) the date that the increase from the particular change occurs. PREPA decreased actual emissions by retiring Units 5 and 6 by September 1996 and December 1996, respectively but did not commence construction of the new combustion turbines by December, 2001 and indeed has still not commenced construction.

The regulations at 40 CFR 52.21(b)(9) defines the term “commenced construction.” Construction commences when the owner/operator has obtained all necessary preconstruction approvals or permits and either has; (i) begun, or caused to begin, a continuous program of actual construction of the source, to be completed within a reasonable time; or (ii) entered into binding agreements or contractual obligations which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time. PREPA received all necessary preconstruction approval or permits by October, 2001. However, at that time, PREPA neither began actual construction nor had entered into any binding agreement or contractual obligation to undertake actual construction. PREPA’s contract for construction had been cancelled 17 months earlier, in May 2000. Thus, PREPA did not meet the “commence construction” test and thereby failed to meet the 5-year contemporaneous period requirement to qualify for netting credits. EPA has no authority to extend this five year period. Thus, in order to obtain an 18 month extension, PREPA must review both the pollutants affected in the original PSD permit as well as the additional pollutants.

(4) Public Comment/Duration of Extension-

Once PREPA has satisfied all of the procedural requirements for an extension, EPA will notice the extension for public comment. Note that if an extension is granted, the permit will expire no later than November 30, 2003.

In the event that PREPA chooses to redefine the project with a different combustion turbine, it should submit a new PSD permit application. The existing PSD permit is defined by the project set forth in the original permit application. The permit was issued, subject to public review, based upon the specific project identified. The BACT and air quality analyses were conducted on that basis. A new project would necessitate a new permit application. This letter is not a final agency action on the part of EPA. Rather, it is intended to assist PREPA in determining how to proceed in light of the two options identified in your March 27, 2002, letter. If you have any questions about this determination, please call Umesh Dholakia at (212) 637-4023.

Sincerely yours,

Steven C. Riva, Chief  
Permitting Section

cc: Angel Berrios, PREQB