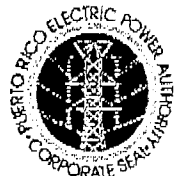


COMMONWEALTH OF PUERTO RICO
PUERTO RICO ELECTRIC POWER AUTHORITY
SAN JUAN, PUERTO RICO

www.prapa.com
STATION



June 19, 2005

P.O. BOX 4267
GENERAL
SAN JUAN, PR
00936-4267
2005 JUN 20 AM 8:26
PREPP-APPB
ENVIRONMENTAL PROTECTION
AGENCY, REGION II

Mr. Steven L. Johnson
Administrator
Environmental Protection Agency
290 Broadway Ave.
New York, N.Y. 10007

Subject: Petition to the Environmental Protection Agency Administrator to Object the Puerto Rico Electric Power Authority Central San Juan Title V Operating Permit PFE-TV-4911-65-1196-0016

Dear Mr. Johnson:

The Puerto Rico Electric Power Authority (hereinafter PREPA) is hereby filing this Public Petition to the Environmental Protection Agency (hereinafter EPA) Administrator to object the issuance of the proposed and final Title V operating permit by the Puerto Rico Environmental Quality Board (hereinafter the PREQB) to the PREPA Central San Juan (hereinafter the Petition). The Proposed Title V Operating Permit was issued by the PREQB as part of the Interlocutory Resolution R-05-04-5 of February 22, 2005. **Exhibit 1.** The Final Title V Operating Permit was issued as part of Final Resolution R-05-14-6 of May 20, 2005. **Exhibit 2.** The Petition is filed pursuant to Part 70.8(d) of Volume 40 of the Code of Federal Regulations (hereinafter 40 CFR) and Rule 609 of the Regulation for the Control of Atmospheric Pollution (hereinafter the RCAP).

Based on the discussion that follows PREPA respectfully requests the EPA Administrator to receive and evaluate the Petition, and object the PREPA Central San Juan Proposed and Final Title V Operating Permits above referenced because the PREQB included **applicable requirements**¹, conditions and limitations that were not part of the Draft Title V Operating Permit subject to the public review and comment period of 40 CFR Part 70.7(h) and Rule 609(a) of the RCAP. The EPA Administrator shall receive and evaluate this Petition, object the

¹ Forty CFR Part 70.2 and Rule 102 of the RCAP define the term **applicable requirement**.

"We are an equal employment opportunity employer and do not discriminate on the basis of race, color, gender, religion, national origin, age, political ideas, physical or mental disability and Vietnam Era veterans status or disabled veterans status"

issuance of the Proposed and Final Title V Operating Permits conditions herein discussed, and modify the Central San Juan Final Title V Operating Permit as hereby requested.

I. HISTORICAL BACKGROUND OF THE CENTRAL SAN JUAN PERMITS

A. On November 15, 1996, PREPA submitted to PREQB a Title V operating permit application to operate a source with four electrical generating units known as emission units SJ7, SJ8, SJ9 and SJ10 (four boilers of 1007.3 MMBTU/hr with steam generators), fuel and other substances storage tanks, emergency generators and compressors. This Title V operating permit application also included an alternative operating scenario for the combined-cycle project of units SJR5 and SJR6 (two new combustion turbines), and other operational conditions for emission units SJ7, SJ8, SJ9 and SJ10 (hereinafter the Combined-Cycle Project).

B. Pursuant to Part C of the Federal Clean Air Act and the 40 CFR Part 52.21, on October 16, 1996, EPA issued to PREPA a Prevention of the Significant Deterioration Permit for the Central San Juan Combined-Cycle Project (hereinafter the 1996 PSD Permit). On September 10, 1999, the PREQB issued to PREPA the Location Approval and Construction Permit (hereinafter the Construction Permit), pursuant to Rules 201 and 203 of the RCAP. **Exhibit 3.**

C. The PREQB issued the Draft Title V Operating Permit on August 8, 1997, issued on October 9, 1998 (hereinafter the Draft Title V Operating Permit). **Exhibit 4.** The PREQB held hearings on the Draft Title V Operating Permit on November 16, 1998 and January 8, 1999. PREPA attended the hearings and submitted comments to the Draft Title V Operating Permit. **Exhibit 5.**

D. Due to delays in the development of the Combined-Cycle Project, on December 16, 2002, PREPA filed with EPA a new Prevention of Significant Deterioration Permit application which considered a reduction in the **potential to emit**² of the pollutants Sulfur Dioxide (SO₂) and Particulate Matter (PM). The reduction in the fuel sulfur content consumed by emission units SJ7, SJ8, SJ9 and S10 (from 1.5% to 0.5% sulfur by weight in Fuel No. 6) was the **federally enforceable**³ condition that would reduce the source's **potential to emit** for said pollutants. On April 1, 2004 EPA approved the new PSD Permit (hereinafter PSD Permit). **Exhibit 6.** On June 18, 2004, PREPA filed at the PREQB a Request to Revise the Construction Permit. The PREQB issued a draft Construction Permit and held public hearings on this document on January 13, 2005. Only PREPA attended this hearing and submitted comments. The Examining Officer for these hearing proceedings has not submitted the report to the PREQB's Governing Board.

E. On October 13, 2004, the PREQB issued Resolution In RE: Central Termoeléctrica San Juan Autoridad de Energía Eléctrica San Juan, Puerto Rico, Case No. R-04-

² The term **potential to emit** is defined in 40 CFR Part 52.21 and in Rule 102 of the RCAP.

³ The term **federally enforceable** is defined in 40 CFR Part 52.21 and in Rule 102 of the RCAP.

30-2, and ordered PREPA to submit a revision to the Title V operating permit application to include the terms of the PSD Permit and of the Construction Permit. On June 6, 2005, PREPA, after following several administrative procedures and filing several motions to PREQB, filed an Informative Motion which indicated that the Request to Revise the Construction Permit was still under evaluation. The Informative Motion also indicated that the Construction Permit will establish the **applicable requirements** that will be included in the Request to Revise the Title V operating permit application. **Exhibit 7.**

F. While these administrative procedures are in progress and the information of the scope, conditions and limitations of the Combined-Cycle Project are known by the PREQB, the agency issued the Proposed Title V Operating Permit as part of the Interlocutory Resolution of February 2, 2005. The Proposed Title V Operating Permit became the Final Title V Operating Permit for PREPA Central San Juan.

II. LEGAL BASIS FOR THE PETITION

A. The Public Petition to the EPA Administrator Pursuant to 40 CFR Part 70.8

Pursuant to 40 CFR Part 70.8(d), if the EPA Administrator does not object in writing the Proposed Title V Operating Permit, within its 45-day review period, any "**person**" may petition the Administrator to make such objection. Such petition shall be made within 60 days after the expiration of the EPA Administrator 45-day review period. Any such petition shall be based on objections to the permit that were raised with reasonable specificity during the public comment period (unless it was impracticable to raise such objections within the period) or unless the grounds for such objections arose after such period.⁴ These provisions were adopted by PREQB and incorporated in Rule 609 (e) (1) of the RCAP.⁵

EPA received the PREPA Central San Juan Proposed Title V Operating Permit on March 7, 2005. EPA's 45-day review period commenced on March 8, 2005. EPA did not object in writing the Central San Juan Proposed Title V Operating Permit within its 45-days review period which ended April 21, 2005. The Public Petition 60-day period of 40 CFR Par 70.8(d) commenced on April 22, 2005.

PREPA is a **person**, according to Rule 102 of the RCAP. The term "**person**" is defined as "*any person natural or juridical, or group of persons, private or public including agencies,*

⁴ 40 CFR Part 70.8 (d).

⁵ Rule 609 (e) (1) of the RCAP states: "*If the Administrator does not object in writing under section (d) of Rule 609, any person may petition the Administrator within sixty (60) days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in section (a) of Rule 609, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.*"

government bodies, municipalities and public quasi-public corporations." PREPA attended the hearings held by PREQB during the Draft Title V Operating Permit public review period. PREPA filed comments to the Draft Title V Operating Permit. Therefore, PREPA is a person authorized to petition the EPA Administrator to object the Proposed Title V Operating Permit which, in this case, became the Final Title V Operating Permit. On May 10, 2005 the PREQB issued the Final Title V Operating Permit during the 60-days public petition review period.

B. The 2004 PSD Permit Conditions and the Applicable Requirements

Any term or condition of a construction permit issued pursuant to Part C of Title I of the Federal Clean Air Act⁶ (Prevention of the Significant Deterioration Program for Construction of New Sources) is an **applicable requirement**. The requirements, conditions, and terms established to PREPA Central San Juan emissions units in the 2004 PSD Permit are **applicable requirements**. Forty CFR Part 70.6(a)(1) and Rule 603(A)(1) of the RCAP regarding the Content of a Final Permit, require that the permit contains limits and standards of emission that ensure compliance with the **applicable requirements at the time the permit is issued**. Therefore, the Final Title V operating permit issued to Central San Juan should have included the **applicable requirements**, conditions and limitations already approved and included in the 2004 PSD Permit.

The federal and local regulations regarding the content of a Title V operating permit and regarding which conditions are **applicable requirements** are clear. The PREQB should have complied with them when issuing the Proposed and the Final Title V Operating Permits. The **applicable requirements** of the 2004 PSD Permit in effect at the time of the Proposed and Final Title V Operating Permits issuance should have been included in the permits.

III. APPLICABLE REQUIREMENTS, CONDITIONS, AND LIMITATIONS OF THE PROPOSED AND FINAL TITLE V OPERATING PERMITS COVERED BY THE PETITION

The comments and objections to the Proposed and Final Title V Operating Permits' conditions hereunder were impracticable to argue at the time the PREQB granted the public review period in 1998 and 1999. On other instances, the grounds to object these conditions arose after such review period because the conditions were incorporated after the public review period ended. Most of the objections to these conditions are the result of the 2004 PSD Permit.

A. Section II –General Permit Conditions

1. General Condition No. 42, on New or Amended Regulations states that "*whether a federal or state regulation is promulgated or amended and the facility is affected by*

⁶ 42 U.S.C. A. §7401 to 7671q.

it, the owner or operator shall comply with the requirements of the new or amended regulation.”
 On this matter we must indicate that the applicability of new regulations or amendments to existent is prospective and under any circumstances sources should be required to be in compliance of a new and amended existing regulation by the time of promulgation. The final permit must contain language to the effect that when new applicable requirements or new amendments to an existing facility comes in effect, reasonable time will be granted to PREPA so it can adjust its operations to the new requirements or to demonstrate its impossibility to fulfill the same. Otherwise, the condition would be arbitrary and capricious, and would violate the due process of law that guarantees the Constitutions of the United States and of the Commonwealth of Puerto Rico. PREPA respectfully requests the EPA Administrator to object this General Condition and modify it according to the Petition.

B. Section IV – Allowable Emissions

1. The allowable emissions for the criteria pollutants PM, SO₂, NO_x, CO, VOC, and Pb included in the Title V operating permit application of 1996 for PREPA Central San Juan are based on the emission factors of the AP-42 Compilation of Air Pollutant Emission Factors (hereinafter AP-42 emission factors) in effect at the time the application was filed. Likewise, the **potential to emit** for all the Hazardous Air Pollutants (HAPs) covered in the Title V operating permit application were determined using operating conditions different from those considered in the 2004 PSD Permit. The Request to Revise the Construction Permit currently under evaluation by the PREQB includes operating conditions and emission factors included and approved in the 2004 PSD Permit. Therefore, PREPA respectfully requests to the EPA Administrator to object the allowable emissions (in tons/year) included in the Table of Section IV and requests that such allowable emissions be revised according to the 2004 PSD Permit approved potentials to emit. According to the 2004 PSD Permit, PREPA proposes a significant reduction in the potential to emit for SO₂, PM, and HAPs, as follows:

Pollutants	Allowable Emissions (tons/year)
PM	2,946.22
PM ₁₀	1,430.51
SO ₂	7,619.76
NO _x	6,739.20
CO	1,654.73
VOC	190.70
Pb	3.54
Cobalt Compounds	0.269
Nickel Compounds	7.37
Formaldehyde	1.27
Total HAPs	23.01

The 2004 PSD Permit approved allowable emissions are already **applicable requirements** and should have been incorporated in the Final Title V Operating Permit.

2. This condition also requires that the annual certification of actual emissions be calculated using the AP-42 emission factors effective at the time of filing the 1996 Request of Title V operating permit application. However, the methodologies used to calculate the **potential to emit** pollutants approved in the 2004 PSD Permit (incorporated in the Request to Revise the Construction Permit) are based on current AP-42 emission factors and the emission factors guaranteed by the manufacturer for the SJR5 and SJR6 units. For NO_x emissions from units SJ7, SJ8, SJ9 and SJ10, PREPA used emission factors obtained from performance tests conducted after the modification of such unit's burners, which emission factors were approved in the 2004 PSD Permit. The SO₂ emission estimates for these units are based on a material balance calculation which considers the sulfur content in fuel conversion to SO₂ during the combustion process. This combination of emission factors allows for better and more precise emission estimates, which is the reason why PREPA respectfully requests the EPA Administrator to object the condition and modify it to allow the use of this combination of emission factors to calculate actual emissions that would be annually certified by PREPA Central San Juan. **Exhibit 8.**

C. Section V – Specific Permit Conditions

1. Section V(A) and Condition V(A) (1)(A) – Particulate Matter Emission Limits for the Normal Operating Scenario of SJ7, SJ8, SJ9 y SJ10

(a) This condition requires that PREPA complies with the emission limit of 0.3 lbs/MMBTU for PM specified in Rule 406 of the RCAP. The 2004 PSD Permit establishes that the PM emission limit for these units will not exceed 0.199 lbs/MMBTU. Therefore, PREPA respectfully requests the EPA Administrator to object the condition and revise it to establish the PM limit of 0.199 lbs/MMBTU.

(b) PREPA also respectfully requests the EPA Administrator to object and revise Condition V (A)(1)(B) to indicate that compliance will be carried out by performance tests conducted according to methods M17 and M5. Test method M17 was included in the table of specific conditions, but omitted from the condition.

2. Section V(A)(2) Sulfur Content Limits -

(a) This condition establishes a limit of 1.5% sulfur by weight in fuel no. 6. Nevertheless, the sulfur content by weight at present is limited to 0.5% as part of the commitment to reduce the SO₂ and PM emissions approved in the 2004 PSD Permit, and included in the Request to Revise the Construction Permit. PREPA respectfully requests the EPA Administrator to object this permit condition and revise it according to the Petition.

(b) Paragraph (c) of this Condition requires that the monthly report of daily fuel consumption be filed with the PREQB 15 days following the end of the month for which the

report is representative. The PREQB issued Resolution R-96-1-1 of January 2, 1996 which authorized PREPA to file the monthly fuel consumption reports within 30 days of the following month. **Exhibit 9.** PREPA respectfully requests the EPA Administrator to object this requirement and to revise it according to the above mentioned Resolution R-96-1-1 of January 2, 1996. PREPA also requests that such revision be made to any other similar condition included in the Proposed and Final Title V Operating Permits for other emission units and alternating operating scenarios.

3. Section V (A) (3) – Asphaltene Content Limit

(a) The condition states that the limit for asphaltene in fuel content is 0.8%. The **applicable requirement** for fuel asphaltene content is 8%, according to the Memorandum of Understanding entered into by PREPA and PREQB on January 31, 1994 **Exhibit 10.** PREPA respectfully requests EPA Administrator to object this condition and revise it accordingly to the Memorandum of Understanding.

4. Section V (A) (4) – Combined Fuel Consumption Limit

(a) The flow meters installed in PREPA Central San Juan emission units SJ7, SJ8, SJ9 and SJ10 are part of the boiler's combustion-control system and do not quantify actual fuel consumption. The installed flow meters do not quantify the real amount of fuel consumed during the start-up and shut-down because some portion of the fuel flow recirculation towards the service tanks of each unit. The flow meters overestimate fuel consumption by including such fuel flow recirculation.

PREPA handles the receipt, dispatch, and consumption of fuel by manually gauging the tank fuel levels, which system has been recommended by the "*American Petroleum Institute (API)*" to PREPA, as well as to industries that handle, process or consume fossil fuels. PREPA depends on this system for purchasing and billing fuel consumption. External inspectors following the standards of "*American Standard for Testing Materials*" certified this system. The Office of the Comptroller of Puerto Rico audits the measurement system of tank fuel levels. The system was approved by PREQB, according to Case No. Q-AI-SL-76-00-01 of September 30, 1977. To support our Petition it should be noted that the system has already been approved for the South Coast Steam Power Plant in that source's final Title V operating permit approved by the PREQB, with the following text: "**The levels of the fuel tank shall be measured every month and the amount of fuel that is received must be measured and recorded each time the fuel is received. The amount of fuel consumed during a month can be determined using the tank level measurement.** (Unofficial translation)" PREPA respectfully requests that the EPA Administrator objects this condition and modifies it according to the Petition.

(b) Paragraph (c) of this condition refers to Section V (A)(7) of the Final Title V operating permit for additional monitoring requirements. The additional monitoring requirements of Section V (A)(7) are directly brought from the Consent Decree entered into

between EPA and PREPA in the United States District Court of Puerto Rico civil case No. 93-25-27(CC). PREPA respectfully requests the EPA Administrator to object the inclusion of the Consent Decree monitoring requirements in this condition, and herein incorporates and makes part of the comments to this condition, PREPA's comments and arguments to Section V(A)(7) hereunder.

5. Section V (A) (6) – Opacity Limits

(a) The Table of Section V(A) and Condition V(A)(6)(B) require continuous monitoring of opacity using Continuous Opacity Monitoring Systems (COMs) and test methods to demonstrate compliance with the limit. PREPA understands that the demonstration of compliance with the opacity limits through the use of COMs shall be according to provision 40 CFR Part 60.7 which relates to COMs. Therefore, PREPA respectfully requests the EPA Administrator to object the "Test Method" column of this section and revise it to clarify that the compliance demonstration for opacity limits when using the COMs shall be according to 40 CFR Part 60.7.

(b) The last sentence of Paragraph (B) of this condition refers to Section V (A)(7) of the Proposed and Final Title V operating permit for additional monitoring requirements. The additional monitoring requirements of Section V (A)(7) are brought directly from the Consent Decree between EPA and PREPA in the United States District Court of Puerto Rico civil case No. 93-2527(CC). PREPA respectfully requests the EPA Administrator to object the inclusion of these Consent Decree monitoring requirements in this condition, and incorporates and makes part to the comments of this condition, PREPA's comments and arguments to the Section V (A)(7) hereunder.

6. Section V(A)7– Monitoring Requirements for Units, SJ8, SJ9 y SJ10 According to Rule RCAP

(a) Section V (A) (7) on Monitoring Requirements, incorporated monitoring requirements that are part of the Consent Decree entered into between the United States Department of Justice, the EPA, and PREPA (the Consent Decree), as part of Civil case No. 93-2527 (CC), United States of America, Communities United Against Pollution v. Puerto Rico Electric Power Authority. This Section V (A) (7) incorporated as "**applicable requirements**" the following programs of the Consent Decree attachment entitled "Air Compliance Attachment": (1) The Optimization Program, (2) the Continuous Monitoring Program, (3) the Opacity Monitors Installation Program, (4) the Fuel Quality Program, (5) the Spare Parts and Inventory Program, (6) the Operations and Preventive Maintenance Program (hereinafter the Programs in the Consent Decree). PREPA respectfully requests the EPA Administrator to object that the Programs of the Consent Decree be incorporated into the Proposed and Final Title V Operating Permits. The Programs are part of a legal civil action transaction. Such actions are not **applicable requirements**, as the term is defined in 40 CFR Part 70.2(2) and Rule 102 of the RCAP.

The federal and local definitions of the term **applicable requirement** do not allow the PREQB or EPA to include in a Title V operating permit the terms, conditions and programs agreed to as part of a court settlement. To support our Petition, PREPA is hereby including in **Exhibit 11** copies of following documents: Rule 603 of the RCAP, the definition of the term applicable requirement of Rule 102 of the RCAP, Part 70.6 of the 40 CFR, and copies of the discussion on the term applicable requirement as discussed in the 57 Federal Register 32250.

Our Petition is also supported in the Examining Officer's Report for the Draft Title V Operating Permit for PREPA Central San Juan. In paragraph number 7 of page 38 of this Report, the Examining Officer makes reference to an EPA communication dated January 21, 1999, and we quote from this Report:

"7. *Que el Plan de Cumplimiento o "Consent Decree" que firmó la parte proponente con la EPA sea parte del permiso. No recomendamos que se acoja el comentario ya que de acuerdo con la carta del 21 de enero de 1999, la EPA establece y entiende que un Consent Decree no es un requisito aplicable".*⁷

PREPA is also including the EPA communication of January 21, 1999, which states "[we] understand that the Consent Decree is not an applicable requirement and we are not asking EQB to include in the Title V Permit the PREPA Consent Decree which is pending entry by the federal court." See **Exhibit 12**.

The requirements of the Consent Decree are not **applicable requirements**; the Programs of the Consent Decree should not have been included in the Proposed and Final Title V Operating Permits. PREPA respectfully requests the EPA Administrator to object Section V (A) (7), and respectfully requests that the Final Title V Operating Permit be modified to eliminate all references to the Programs of the Consent Decree. In addition, Section V (A) (7) was not included in the Draft Title V Operating Permit. PREPA did not have the opportunity to comment on this very significant condition in the public review period. The grounds to object this condition arose after the public review period of 40 CFR Part 70.7(h).

ww

C. **Section VI- Requirements per Emission Unit for Alternative Operating Scenarios**

(a) PREPA respectfully requests that the EPA Administrator objects and modifies all conditions in the alternate operating scenarios that are identical to the conditions of the normal operating scenario for which we are filing this Petition.

⁷ Following is an unofficial translation of paragraph number 7 of page 38 of the report: "7. *That the Compliance Plan or Consent Decree signed by the petitioner with the EPA be part of the permit. We do not recommend that the comment be accepted since in accordance to the January 21, 1999 communication, EPA establishes and understands that a Consent Decree is not an applicable requirement".*

Petition for the Environmental Protection
Agency Administrator to Object the
Puerto Rico Electric Power Authority Central
San Juan Title V Operating Permit
PFE-TV-4911-65-1196-0016
June 19, 2005
Page 10

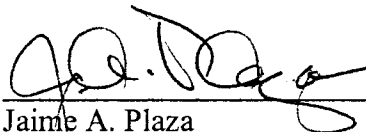
D. Section VIII Reporting Requirements

(a) PREPA respectfully requests that the EPA Administrator objects and modifies this condition according to the comments and requests of Part III (A) of this Petition, which are incorporated and made part of the comments to this permit condition.

WHEREFORE, PREPA respectfully requests the EPA Administrator to receive and evaluate this Petition, object the PREPA Central San Juan Proposed and Final Title V Operating Permits' **applicable requirements**, conditions and limitations discussed above, and for the arguments aforesaid, modify them according to Petition and pursuant to 40 CFR Part 70.8(d) and Rule 609(e) of the RCAP.

RESPECTFULLY SUBMITTED.

**PUERTO RICO ELECTRIC POWER AUTHORITY
PO BOX 364267
SAN JUAN, P. R. 00936-4267**



Jaime A. Plaza
Division Head
Environmental Protection and Quality Assurance

Enclosures

c. Ms. Kathleen Callahan
Regional Administrator
Region II

Carlos López Freytes, Esq.
President
Environmental Quality Board