

to account for the need to send units off-island for repair, VIWAPA developed a policy and practice of attempting to maintain sufficient reserve capacity. The petitioner goes on to state that because of the long-term loss of one unit (Unit 11) for major repairs and the imminent major repair of another unit (Unit 22), the maximum capacity of all remaining units on St. Thomas is about to drop significantly and therefore the petitioner anticipates a number of scenarios in which there will not be sufficient reserve capacity for powering St. Thomas. The petitioner points out that this will exacerbate an already problem-ridden power supply.

#### *b. Power Crisis on St. Thomas*

The petition claims that VIWAPA “no longer has sufficient capacity to ensure a continuous power supply sufficient to meet public needs. Consequently the island has been experiencing frequent power outages whenever a major unit is forced out or is taken out of service for maintenance.”

The petitioner states that with Units 11 and 22 unavailable, whenever there is an outage of Unit 13 alone, or an outage of a combination of any two remaining units except 12 and 14, a serious power outage will occur. The petitioner claims the age and unreliability of a number of VIWAPA’s units resulted in significant blackouts over the past 12 months even though Units 11 and 22 were available for service. These assertions are documented in three tables attached to the petition.

#### **IV. What Is EPA’s Analysis of the Petition?**

EPA has reviewed the modeling submitted by VIWAPA in support of its application for a permit to construct and operate Unit 23 and in support of this petition and has determined that authorizing this exemption will not impact upon compliance with any requirement under sections 112, 110, or part D of the Act necessary to attain or maintain a NAAQS or PSD increment.

Upon consideration of VIWAPA’s contentions, EPA has determined that the petition presents unique geographic and economic circumstances which meet the section 325 criteria for authorizing an exemption from the CAA section 165(a) requirement to obtain a PSD permit to construct prior to commencing construction of Unit 23 at the VIWAPA St. Thomas facility.

#### **V. What Is EPA’s Conclusion?**

The EPA is approving the petition for an exemption of the CAA section 165(a) requirement to obtain a PSD permit to

construct prior to commencing construction of a new gas turbine, Unit 23, at the VIWAPA St. Thomas facility. This exemption will allow for the construction, but not the operation, of Unit 23 prior to issuance of a final PSD permit.

EPA is relying on the Governor’s assertion that the construction and ultimate operation of Unit 23 should provide a reliable baseload which will give VIWAPA flexibility to meet electrical demand and that the additional capacity provided by this unit would be sufficient to allow for both planned and unplanned outages of generating units at the VIWAPA St. Thomas facility. EPA believes that by accelerating the time period by which this unit can be constructed, this rulemaking may increase VIWAPA’s potential to provide more reliable power in St. Thomas.

The EPA is publishing this direct final rule without prior proposal because the Agency views this as a noncontroversial approval and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve this same petition should adverse comments be filed. This final rule will be effective March 1, 2004, without further notice unless the Agency receives relevant adverse comments by January 30, 2004.

If the EPA receives any adverse comments, EPA will publish a notice withdrawing the final rule and inform the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 1, 2004, and no further action will be taken on the proposed rule.

#### **VI. Statutory and Executive Order Review.**

##### *A. Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

##### *B. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all “collections of information”

by EPA. The Act defines “collection of information” as a requirement for “answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*” 44 U.S.C. 3502(3)(A). Because the exemption only applies to one company, the Paperwork Reduction Act does not apply.

##### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because the exemption applies to only one source and does not create any new requirements but simply postpones requirements that will be met. This Federal exemption does not create any new requirements; therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

##### *D. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve an exemption under Federal law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.