Walt Disney World Co.

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BUREAU OF AIR REGULATION

October 2, 2001

Mr. Clair H. Fancy, P.E., Chief
Bureau of Air Regulation
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

RE: DEP File No. 0950111-018-AV
Walt Disney World Co.
Gas Turbine Generator and Heat Recovery Steam Generator with Duct Burner

Dear Mr. Fancy:

In a letter dated October 20, 2000, I advised the Department of certain maintenance activities associated with the above referenced gas turbine which is owned by the Reedy Creek Improvement District (RCID). In that letter, I also noted that the maintenance activity would not result in more emissions than past actual levels.

In your responding letter, dated November 1, 2000, you noted that the Department had preliminarily concluded that the procedure of comparing future representative actual annual emissions to past actual emissions to determine whether a modification had occurred was not applicable to our situation. It was the Department's understanding at that time that the definition of an electric utility steam generating unit did not apply to this gas turbine as it appeared that the electricity generated from the steam turbine electrical generator was less than 25 MW.

Recent guidance from EPA however, indicates that gas turbines and waste heat recovery components of combined cycle gas turbines do qualify as electric utility steam generating units if the combined cycle gas turbine systems supply more than one-third of their potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. This guidance is outlined in the attached letter (attachment 1) from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Mr. Patrick M. Raher, Hogan & Harston L.L.P., dated August 6, 2001. The letter was obtained from the EPA's Office of Air Quality Planning and Standards Uncategorized Policy and Guidance Documents Internet site (http://www.epa.gov/ ttn/nsr/poly_gui.html) at:http://www.epa.gov/ttn/nsr/gen/cgtsd.pdf.

As the RCID gas turbine generator and heat recovery steam generator with duct burner supplies more than one-third of its potential electric output capacity and up to 40.5 MW electrical output to a utility power distribution system for sale, it is our opinion that this unit is considered an electric utility steam generating unit and, as such, the procedure of comparing future representative actual annual emissions to past actual emissions to determine whether a modification would occur as a result of maintenance activities would apply. It is our intent to use the comparison of future representative actual annual emissions to past actual emissions in considering whether specific activities would result in a modification.

If you or your staff would like to discuss this matter further, please contact me at (407) 828-5772.

Sincerely,

Armando Rodriguez
Director, Environmental Affairs Division

Attachment
cc: Len Kozlov, DEP CD
Al Linero, DEP
Lee Schmudde, WDW

August 6, 2001

Mr. Patrick M. Raher
Hogan & Hartson L.L.P
555 Thirteenth Street, NW
Washington, DC 20004-1109

Dear Mr. Raher:

This letter responds to your April 26, 2001, request on behalf of PSEG Fossil for a formal determination about whether combined cycle gas turbine systems qualify as "electric utility steam generating units" for purposes of determining applicability of New Source Review (NSR). Under our current regulations at 40 CFR Part 52.21(b)(21)(v), electric utility steam generating units may use an actual to representative actual annual emissions comparison (the WEPCO applicability test) to determine whether emissions increases that result from a physical change or change in the method of operation at the major stationary source exceed the significant level.

After reviewing the information provided in your letter and the various letters and information you cite, I have concluded that the gas turbine(s) and waste heat recovery components of combined cycle gas turbine systems do qualify as electric utility system generating unit(s) if the combined cycle gas turbine systems supply more than one-third of their potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. These components meet the definition of an electric utility steam generating unit because they are emissions units (any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act), that were constructed for the purpose of generating steam and electricity. Since these are the only components in the combined cycle system that have the potential to emit air pollutants, this means that any increase in emissions at the combined cycle systems due to a physical or change in the method of operation at the major stationary source would be assessed using the WEPCO applicability test described above (e.g., an increase in emissions at the waste heat recovery unit or gas turbine caused by a modification at the steam turbine would be assessed using an actual to representative actual annual emissions comparison).

The conclusion that these components qualify as electric utility steam generating units is supported by the preamble to the proposed and final "WEPCO" rule (40 Fed. Reg. 27,630 (1991) and 40 Fed. Reg. 32,314 (1992), respectively). In this rule, the Environmental Protection Agency (EPA) adopted several changes to the NSR requirements including the WEPCO applicability test and the pollution control project exclusion. In discussing the nature of these

actions, EPA referred to "utilities" in a broad sense. The EPA promulgated the WEPCO rule in response to the Federal appellate court's decision in *Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901* (7th Cir. 1990). That decision involved the applicability of NSR to an electric utility plant with boilers. While EPA focused on this type of "steam generating unit" in crafting the regulatory language for the WEPCO rule, the preamble addresses the use of the WEPCO applicability test for "utilities" and does not indicate an intent to limit application of the WEPCO "applicability test" to only "steam generating units" used in production of electricity at coal-fired power plants. Thus, we believe that it is permissible to include combined cycle gas turbines within the definition of an "electric utility steam generating unit" as well. Moreover, EPA stated that the pollution control project exclusion was intended to allow utilities to make the necessary changes to comply with the title IV Acid Rain provisions. Combined cycle gas turbines are among the utilities that are required to comply with the title IV Acid Rain provisions.

The term "electric utility steam generating unit" is also used in the New Source Performance Standards (NSPS), 40 CFR Part 60, and the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 63. The NSPS Subpart Da applies to "each electric utility steam generating unit" that meets certain criteria. 40 CFR 60.40a(a). It specifically applies to "electric utility combined cycle gas turbines," but only to "emissions resulting from combustion of fuels in the steam generating unit." 40 CFR 60.40a(b). The emissions from the gas turbines are regulated separately under the stationary gas turbines NSPS, 40 CFR Part 60, Subpart GG. Similarly, under the Part 63 NESHAP program, emissions from the combustion turbines in a combined cycle system will be addressed separately from emissions from the components of the system that are directly involved in steam production. See 65 FR 34010 (May 25, 2000).

We are taking a somewhat different approach under the NSR program because of structural differences between the NSR and NSPS/NESHAP programs and because we are taking into account the specific context in which this term entered the NSR regulations. Both the NSPS and the NESHAP provisions of the Clean Air Act require national standards for particular source categories. It is possible for a given industrial plant to be subject to multiple NSPS or multiple NESHAPs. One NSPS or NESHAP may cover equipment that another does not. Because different types of equipment may have different emissions characteristics and the means of limiting emissions may vary from one type of equipment to the next, it may be impractical or undesirable to group certain equipment together. Thus, a particular NSPS or NESHAP generally applies to equipment that has common emissions characteristics and whose emissions can be controlled to the degree specified in the regulations. The NSPS program includes, and the NESHAP program will include, regulations specifically directed at stationary combustion turbines, whether or not part of a combined cycle and whether or not located at a utility. A narrow interpretation of "electric utility steam generating unit," as applied to combined cycle systems, is appropriate given the narrow focus of these programs. In contrast, NSR applicability determinations are plant-wide, and a determination that NSR applies does not decide the issue of whether, or to what extent, the plant must reduce emissions from particular equipment. Thus, a broader interpretation of "electric utility steam generating unit" is appropriate for NSR purposes.

In addition, our interpretation of this term for NSR purposes is based on the goals set forth in the preamble to the WEPCO rule (as previously discussed above), where this term appeared for the first time in the NSR context.

Your April 26, 2001, letter also suggested that EPA review the inlet air fogging process to determine whether installation of this process constitutes a physical change or change in the method of operation of a unit. To date, we have reviewed several applications for fogger installations. Although we have determined that these installations at these particular stationary sources did constitute a physical change, many of these changes did not qualify as major modifications because they did not cause a significant increase in actual emissions. It is our understanding that there are several different methodologies for installing foggers, so our conclusions in these particular cases may not apply universally. We will continue to review this issue as specific situations are brought to our attention. I hope the information in this response to your request for a formal applicability determination is helpful. If you need any further clarifications on this applicability determination, please feel free to contact me.

Sincerely,

(Signed by John S. Seitz)

John S. Seitz
Director
Office of Air Quality Planning
and Standards