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Jim Ruby, Executive Secretary
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF:)
BASIN ELECTRIC POWER COOPERATIVE) EQC DOCKET NO. 07-2801
DRY FORK STATION)
AIR PERMIT CT-4631)

**ORDER GRANTING BASIN ELECTRIC COOPERATIVE'S AND DEPARTMENT OF
ENVIRONMENTAL QUALITY'S MOTIONS FOR SUMMARY JUDGMENT
REGARDING PROTESTANTS' CLAIM VIII**

THIS MATTER came before the Environmental Quality Council (EQC) on September 29, 2008, for oral argument on motions for summary judgment filed by all three parties. EQC members present at the September 29, 2008 motion hearing included Dennis M. Boal, Chairman, F. David Searle, Vice-Chair and Presiding Officer in this case, John N. Morris, Thomas Coverdale, Tim Flitner and Dr. Fred Ogden. Jim Ruby, Executive Secretary of EQC and Marion Yoder, Assistant Attorney General were also present. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner. The Protestants, Earthjustice, Powder River Resource Council, the Sierra Club and the Wyoming Outdoor Council appeared by and through counsel, Reed Zars. Basin Electric Power Cooperative (Basin Electric) appeared by and through counsel, Mark Ruppert. The Department of Environmental Quality, Air Quality Division (DEQ) appeared by and through its counsel, Senior Assistant Attorney General Nancy Vehr and Luke Esch.

In the Protestants' November 1, 2008 Protest and Petition for Hearing (Petition), Protestants identified eight separate claims of violation of the Prevention of Significant Deterioration (PSD) permitting process. All three parties filed Motions for Summary Judgment, with attachments, legal memoranda and responses regarding Claim VIII of

the November 1, 2007 Petition, as set forth in paragraphs 67-69. The EQC has considered the motions, written responses and argument of the parties, and finds as follows:

I. JURISDICTION

“The council shall act as the hearing examiner for the department and shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions.” Wyo. Stat. Ann. § 35-11-112(a) (LEXIS 2007).

The issuance or denial of permit is a final agency action by DEQ for purposes of appeal. The council shall, “Conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit, license, certification or variance authorized or required by this act.” Wyo. Stat. Ann. § 35-11-112(a)(iv) (LEXIS 2007).

The Protestants disputed the Director of DEQ’s approval of Basin Electric’s Air Quality Permit CT-4631 for the Dry Fork Station project and requested a hearing before the Council. Therefore, this Council has jurisdiction to hear and decide this matter.

II. STATEMENT OF THE CASE

Pursuant to the Wyoming Environmental Quality Act (WEQA) and DEQ regulations, an air quality construction permit is needed before any person commences construction of any new facility or modifies any existing facility which may cause the issuance of air pollution in excess of the standards set by the DEQ. On November 10, 2005, Basin Electric submitted an air quality construction permit application to DEQ to

construct a coal-fired power generating station, known as Dry Fork Station, near Gillette, Wyoming. On October 15, 2007, after nearly two years of technical review and analysis by the Air Quality Division, the Director of DEQ determined that Basin Electric's November 10, 2005 application for construction of the Dry Fork Station satisfied the applicable statutory and regulatory requirements and approved Basin Electric's application to construct Dry Fork Station by issuing Air Quality Permit CT-4631.

On November 1, 2007, Protestants' filed a Protest and Petition for Hearing asserting eight separate claims of violations of the PSD permitting process. Specifically, in Claim VIII of the Petition, the Protestants alleged that DEQ erred by determining that the emissions from the Dry Fork Station Project would not cause or contribute to an exceedance of the applicable sulfur dioxide (SO₂) increment.

All three parties thereafter filed motions for summary judgment on Claim VIII as set forth in paragraphs 67-69 of the Petition.

III. ISSUES AND CONTENTIONS

The issue raised by all three parties in this September 29, 2008 motion hearing is whether DEQ properly determined that SO₂ emissions from Dry Fork Station were legally insignificant and thus not causing, contributing to, or impacting any allowable SO₂ increment exceedance in the Northern Cheyenne Indian Reservation in Montana, a Class I area.

The Protestants argued that since the predicted emissions of SO₂ from Dry Fork Station and other applicable sources will exceed the maximum allowable 24 hour SO₂

increments in the Northern Cheyenne Indian Reservation in Montana, a Class I area, DEQ erred in issuing the Air Quality Permit.

DEQ argued the cumulative modeling demonstrated that Basin Electric's emissions would never have more than a *de minimis* impact, and therefore the air quality permit was properly issued in accordance with its rules and regulations, practices, case law and EPA guidance. Basin Electric agreed with DEQ's position.

All parties moved for summary judgment on this issue. All parties agreed there were no genuine issues of material fact and argued for summary judgment as a matter of law.

IV. FINDINGS OF FACT

1. On November 10, 2005, Basin Electric submitted an air quality construction permit application to construct a coal-fired electric power generating plant, known as Dry Fork Station, near Gillette, Wyoming. *See* Schlichtemeier Aff., ¶ 15; Schlichtemeier Aff., Ex. D; DEQ Annex ¶ 1; Protestants' Response to DEQ Annex ¶ 1.

2. On October 15, 2007, the Director of DEQ determined that Basin Electric's application for construction of the Dry Fork Station satisfied the applicable statutory and regulatory requirements and issued Air Quality Permit CT-4631. By issuing the permit, the Director of DEQ determined the application satisfied both New Source Review (NSR) and Prevention of Significant Deterioration (PSD) requirements. *See* Schlichtemeier Aff., ¶¶ 32-33, Ex. T and Ex. U.

3. In Air Quality Permit CT-4631, DEQ states the appeal rights available as follows:

Any appeal of this permit as a final agency action of the Department must be made to the Environmental Quality Council within sixty (60) days of permit issuance per Section 16, Chapter 1, General Rules of Practice and Procedure, Department of Environmental Quality.

See Air Quality Permit CT-4631.

4. In accordance with the appeal rights guidance and the DEQ's Rules of Practice and Procedure, Protestants filed their Protest and Petition for Hearing on November 1, 2007. The Protestants asserted eight separate counts or claims of violations of the PSD permitting regulations. The case was thereafter referred to the EQC.

5. All three parties thereafter filed motions for summary judgment on the Protestants' Claim VIII in its Protest and Petition for Hearing. Protestants asserted in Claim VIII that the air quality permit should have been denied because of ongoing exceedance violations of the maximum allowable 24 hour SO₂ increments in the Northern Cheyenne Indian Reservation in Montana, a Class I area, in violation of Wyoming law and the rules of the DEQ.

6. Under the permit application, Basin Electric proposed a mine-mouth 422 megawatt (MW)(gross)/385 MW(net) pulverized coal-fired electric power generating unit. *See* Schlichtemeier Aff., ¶ 34. The permit application was filed on November 10, 2005 with DEQ pursuant to the Wyoming Environmental Quality Act (WEQA) and the Prevention of Significant Deterioration (PSD) program created by the federal Clean Air Act (CAA), as administered by the Air Quality Division of DEQ (DEQ/AQD), pursuant to Wyoming's State Implementation Plan (SIP) approved by the Environmental Protection Agency (EPA).

7. The DEQ/AQD completed its Permit Application Analysis on February 5, 2007. *See* Schlichtemeier Aff., Ex. N.

8. As a part of the permit application, Basin Electric conducted an analysis of the air quality impacts on Class I areas located within 300 kilometers (km) of the proposed Dry Fork Station. *See* Schlichtemeier Aff., Ex. D at DEQ/AQD Bates No. 000138; Rairigh Aff., ¶ 28 (Ex. 2 to DEQ Motion). One such Class I area is the Northern Cheyenne Indian Reservation (NCIR) located in Montana, near the Colstrip Power Plant (Colstrip).

9. No dispute exists as to the model and methodology used for the air quality dispersion modeling performed by Basin Electric and DEQ, or the correctness of the application of that modeling. The parties agree that the modeling was done properly.

10. There are two distinct phases of air dispersion modeling: (1) the preliminary analysis (also known as a screening analysis); and (2) if necessary, a full impact analysis (cumulative modeling). EPA guidance provides that no further modeling using a full impact (cumulative) analysis is necessary if the screening phase of preliminary analysis shows no impacts from the proposed source above a significant impact level (SIL), because in that case the proposed source's impact is considered insignificant. The screening phase of the preliminary analysis showed that Dry Fork Station's emissions, by themselves, had no impact in any area above the SIL for any Class I areas, except for SO₂ in the NCIR. *See* New Source Review Workshop Manual (NSR Manual) at C.24 (Ex. 2 to Basin Electric's Memo in Support of Motion for Summary Judgment (Basin Electric Brief)).

11. In support of its Permit Application and during the permit review process, Basin Electric conducted cumulative modeling of emissions from all increment-consuming sources within 300 kilometers of the NCIR in Montana using both the 90th percentile of actual emissions and maximum actual emissions from the primary source of pollution affecting the NCIR, Colstrip Units 3 and 4 (Colstrip) in Montana near the NCIR. Maximum allowable emissions were used for smaller sources including the proposed Dry Fork Station. This cumulative modeling of actual emissions from Colstrip and maximum allowable emissions from all other sources, including those projected for the Dry Fork Station, demonstrated that no SO₂ increment exceedances would occur at the NCIR from Dry Fork Station or any other modeled source of emissions. *See* Rairigh Aff., ¶ 30; Schlichtemeier Aff., Ex. D at DEQ/AQD Bates Nos. 000142-143 (sources included in cumulative increment modeling); Expert Report of Robert L. Pearson at 8-14 (Ex. 14 to Basin Electric Brief).

12. On March 28, 2006, after completing its second review of the permit application (Completeness Review No. 2), the DEQ/AQD required Basin Electric to model Colstrip Units 3 and 4 using the short-term permitted SO₂ emission rates (also referred to as the “maximum allowable” or “potential to emit”) for those sources. DEQ also provided Basin Electric with a 1 km receptor grid to be used in further modeling analyses for the NCIR. *See* Schlichtemeier Aff., ¶ 18, Ex. G; Rairigh Aff., ¶¶ 33-36.

13. After DEQ required Basin Electric to conduct cumulative modeling it was predicted that there might be 47 possible SO₂ increment exceedances of the 5.0 microgram per cubic meter limit in the NCIR over the three year period modeled.

14. On 18 of the 47 modeled increment violations, Dry Fork Station's modeled impact was zero. *Id.*

15. Of the remaining 29 modeled increment violations, when Dry Fork Station's modeled theoretical contribution was greater than zero, the modeled impact of Dry Fork Station on 25 of these occasions was between 0.0002 and 0.0009 micrograms per cubic meter (that is, between 200 and 900 trillionths of a gram per cubic meter). The other 4 occasions were all below the SIL, which is used by the EPA and DEQ to determine when a modeled impact is so small as to be legally *de minimis* because of its insignificance. The SIL level employed by the EPA and DEQ for SO₂ is 0.2 micrograms per cubic meter. *Id.*

16. As a consequence, it is undisputed that the Dry Fork Station never had a modeled impact above SIL levels. All of Dry Fork Station's modeled emissions impacts were *de minimis* under the test for determining *de minimis* impacts employed by EPA under the CAA and by DEQ in its implementation of the CAA in Wyoming, and even these *de minimis* impacts occurred only under DEQ's requested conservative modeling assumptions.

17. The DEQ Director and DEQ/AQD Administrator determined that the cumulative modeling results for SO₂ in the NCIR showed that the impact of emissions of SO₂ from Dry Fork Station were legally insignificant and thus not causing, contributing to, or impacting any allowable SO₂ increment in the NCIR. *See Rairigh Aff.*, ¶ 40; *Schlichtemeier Aff.*, Ex. J at DEQ/AQD Bates No. 000632.

18. In deciding to issue the permit to construct Dry Fork Station, the DEQ Director and AQD Administrator applied the Class I SIL of 0.2 micrograms per cubic

meter to determine that Dry Fork Station's SO₂ impacts in the NCIR were never significant and were always *de minimis*. For the last 6 years, the DEQ has employed Class I SILs, in approximately 10 permit applications, as a screening tool to determine whether a proposed source would have a significant impact on a Class I area and whether cumulative modeling would then be required. These facilities include WYGEN 2, ExxonMobil, Solvay, Opal, OCI, Basin Electric Dry Fork, WYGEN 3, and Two Elk Unit 2. *See Rairigh Aff.*, ¶ 23.

19. DEQ has done so based on the reasoning that a *de minimis* threshold is needed to screen out potentially insignificant sources of emissions. DEQ has also previously employed SILs after cumulative modeling to determine a source's modeled impact was *de minimis*, consistent with EPA practice. *See Rairigh Aff.*, ¶¶ 22 and 23; *Schlichtemeier Aff.*, Ex. V, *WyGen 2 Decision* pp. 17-20.

20. The use of the Class II SILs in modeling assessments is well established in past DEQ PSD permitting decisions and has been used since implementation of the PSD program in 1980. *See Rairigh Aff.*, ¶ 21.

21. Although DEQ is the permitting authority for Dry Fork Station under Wyoming's State Implementation Plan (SIP) approved by the EPA, the EPA had the opportunity to comment on the draft Dry Fork Station permit and did make several comments on the draft permit before the final permit was issued. None of those comments related to the SO₂ increment in the NCIR. The EPA has the responsibility to protect and the authority to regulate air quality in the NCIR. Having this responsibility and authority, EPA did not disagree with DEQ's use of SILs and a *de minimis* threshold

to conclude that emissions from Dry Fork Station would not impact the SO₂ increment in the NCIR. *See* Schlichtemeier Aff., Ex. T at DEQ/AQD Bates No. 004154-4157.

22. The EPA proposed SILs for use in Class I areas in 1996 (61 Fed. Reg. 38,250, 38,338 (July 23, 1996)), and the level proposed for SO₂ for a 24-hour reading was 0.2 micrograms per cubic meter, which is only 4% of the small Class I increment. Most permitting agencies use these proposed Class I SILs in the permitting process. *See* Deposition of Protestants' Expert Khanh Tran at p. 51:15-18 (August 12, 2008) (Ex. 5 to DEQ Motion).

23. Requiring a proposed source to demonstrate a zero impact on a modeled increment exceedance before DEQ could issue a PSD permit, instead of DEQ applying *de minimis* SIL levels to determine the significance of the predicted impact, would unnecessarily jeopardize development of other sources and economic development in Wyoming.

24. No evidence was presented demonstrating that there existed any permitting agency which does not use Class I SILs in the permitting process.

25. All findings of fact set forth in the following conclusions of law-section shall be considered a finding of fact and are fully incorporated into this paragraph.

V. CONCLUSIONS OF LAW

A. General Principles of Law

26. The EQC's jurisdiction is governed by the Environmental Quality Act. Wyo. Stat. Ann. § 35-11-111 (LEXIS 2007).

27. Pursuant to the WEQA, the council **shall**, “Act as the hearing examiner for the department and shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions.” Wyo. Stat. Ann. § 35-11-112(a) (LEXIS 2007) (emphasis added).

28. The Council **shall**, “Conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit, license, certification or variance authorized or required by this act.” Wyo. Stat. Ann. § 35-11-112(a)(iv) (LEXIS 2007) (emphasis added).

29. All hearings before the Council, appeals or others, shall be held pursuant to these rules, the provisions of the Environmental Quality Act W.S. § 35-11-101 through 1104 and the Wyoming Administrative Procedure Act. Department of Environmental Quality, Rules of Practice and Procedure, Chapter 1, Section 3 and Chapter 2 (DEQ’s Rules).

30. Chapter II, Section 14 of the DEQ Rules of Practice & Procedure (DEQ RPP) makes the Wyoming Rules of Civil Procedure applicable to matters before the EQC. (DEQ RPP Ch. 2, § 14).

31. The Wyoming Rules of Civil Procedure provide that summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WYO. R. CIV. P. 56(c).

32. Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WYO. R. CIV. P. 56(b), (c).

33. Summary judgment procedures set out in WYO. R. CIV. P. 56 apply to administrative cases. *Rollins v. Wyoming Tribune Eagle*, 2007 WY 28, ¶ 6; 152 P.3d 367, ¶ 6 (Wyo. 2007).

34. The purpose of summary judgment is to dispose of cases before trial that present no genuine issues of material fact. *Id.* A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of the cause of action or defense. *Id.*

35. Where there are no genuine issues of material fact, summary judgment concerns application of the law. *Bd. of County Comm'rs of County of Laramie v. City of Cheyenne*, 2004 WY 16, ¶ 8; 85 P.3d 999, ¶ 8 (Wyo. 2004).

B. Principles of Law Regarding SO₂ Analysis

36. The WEQA requires a permit to construct “before construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of standards established by the department is commenced.” WYO. STAT. ANN. § 35-11-801; WAQSR Ch. 6, § 2.

37. Before the DEQ may issue a permit, the applicant must prove to the DEQ Director’s satisfaction that the applicant has complied with the WEQA and regulations promulgated thereunder. WYO. STAT. ANN. § 35-11-801; WAQSR Ch. 6, § 2.

38. Wyoming has a valid SIP approved by the EPA to permit pollution emitting sources so long as they comply with the rules and regulations implemented by DEQ. 40 C.F.R. Part 52, Subpart ZZ (2007).

39. Pursuant to Wyoming's PSD regulations, DEQ is required to review major source facility applications to ensure that emissions from the proposed facility will not cause or contribute to an exceedance of ambient air quality standards or violations of any PSD air quality increments. WAQSR Ch. 6, §§ 2 and 4.

40. Since Dry Fork Station requires a PSD permit, Basin Electric was required to demonstrate to the Administrator's satisfaction that emissions from its proposed source would not cause significant deterioration in air quality, including an analysis of any impact on increments in any protected Class I area, including the NCIR. 40 C.F.R. § 51.166(k); WAQSR Ch. 6, §§ 2(c)(iii) and 4(b). This demonstration was done using air quality dispersion modeling prescribed by EPA. *See* the EPA's New Source Review Workshop Manual (NSR Manual) at C.24 (Ex. 2 to Basin Electric Brief).

41. The purpose of the PSD program, under both the federal CAA and the Wyoming Environmental Quality Act (WEQA) that implements the federal CAA is "to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources." 42 U.S.C. § 7470(3); WYO. STAT. § 35-11-102. In enacting the WEQA (WYO. STAT. § 35-11-101, *et seq.*), "[t]he legislature knew that business and industry, essential to the state's economic health, had to be maintained." *State v. Platte Pipeline Co.*, 649 P.2d 208, 212 (Wyo. 1982).

42. The EPA has established SILs that are used to determine when a modeled impact is "significant" enough to merit regulatory concern. According to the EPA, the

concept of a SIL is grounded on the *de minimis* principles described by the court in *Alabama Power Co. v. Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979), affirming that air quality regulation does not require regulating trivial impacts that have no significance to air quality or the environment. 72 Fed. Reg. 54112, 54139 (Sep. 21, 2007). Modeled impacts below SILs are therefore considered by the EPA to be legally insignificant and effectively zero for increment consumption purposes.

43. SILs are routinely used by the EPA and state air quality regulators to determine if a modeled impact on air quality is legally *de minimis*, that it has no effect on the environment. NSR Manual at C.52 (Basin Electric Ex. 2); Tran Depo. at pp. 52:22-25, 53:1-4 (DEQ Ex. 5).

44. The EPA proposed SILs for use in Class I areas in 1996 (61 Fed. Reg. 38250, 38338 (July 23, 1996)), and the level proposed for SO₂ for a 24-hour reading was 0.2 micrograms per cubic meter, which is only 4% of the small Class I increment. This proposed SIL has been widely used by the EPA and other states since 1996 to measure when a modeled impact is significant enough to warrant regulatory concern. One microgram is one millionth of a gram. The EPA and the EPA Environmental Appeals Board (EAB) recognize the use of SILs to determine whether a proposed source's impact on a modeled increment violation is insignificant or *de minimis*. *In re Prairie State Generating Station*, PSD Appeal No. 05-05, 13 E.A.D. ____ (EAB 8-24-2006), slip. op. at 139.

45. The Director of DEQ is authorized to perform any and all acts necessary to administer the provisions of the WEQA and any rules, regulations, standards, or requirements established thereunder, and to exercise all incidental powers as necessary to

carry out the purposes of the EQA. WYO. STAT. § 35-11-109(a)(i). The Administrator of DEQ/AQD has the “powers as shall be reasonably necessary and incidental to the proper performance of the duties imposed” on the Air Quality Division by the EQA. WYO. STAT. § 35-11-110(a)(x). These powers include the use of EPA-proposed Class I SILs as a tool to exempt *de minimis* impacts in analyzing increment violations. The EPA proposed Class I SILs use have not been adopted through State legislation, rules or regulations, but is conducted under a policy of the State DEQ.

46. Wyoming’s EQA expressly recognizes that DEQ/AQD will be implementing the federal CAA pursuant to an EPA-approved State Implementation Plan. WYO. STAT. §§ 35-11-103(b)(iii) and (v); 35-11- 203 *et. seq.*; 35-11-102.

C. Application of Principles of Law

47. DEQ’s use of Class I SILs to determine *de minimis* impacts when analyzing increment violations in a Class I area does not create an ability to depart from the federal CAA, or the WEQA, or Wyoming’s laws and regulations, “but rather is a tool to be used in implementing the legislative design.” *Alabama Power Co. v. Costle*, 636 F.2d at 360.

48. The modeling results demonstrated legally insignificant impacts from Dry Fork Station at the NCIR, i.e. below the SILs, and therefore, the issuance of the permit was appropriate. Economic development need not be halted for impacts that are so small as to be trivial. *Groce v. Dept. of Env. Prot.* 921 A.2d 567, 578 (Pa. Cmwlth. Ct. 2007).

49. Under the regulations, DEQ has the discretion to evaluate increment consumption using allowable emissions or actual emissions. 40 C.F.R. § 51.166(b)(13); WAQSR Ch. 6, § 4(a) – “Baseline concentration” (iv)(A); “actual emissions” (ii).

Modeling in this case using actual emissions from all sources predicted no increment exceedances.

50. Requiring a proposed source to demonstrate zero impact on a modeled increment exceedance before DEQ could issue a PSD permit, instead of DEQ applying *de minimis* SIL levels to determine the significance of the predicted impact, would unnecessarily jeopardize development of other sources and economic development and not follow the legislative purpose of the EQA or the PSD program of the federal Clean Air Act.

51. WAQSR Chapter 6, § 4(b) must be construed with the other permitting requirements provisions of WAQSR Chapter 6, including § 2. DEQ must have some flexibility and authority to interpret the WAQSR to meet the statutory mandates and legislative intent of the federal CAA. The provisions of federal law cannot otherwise be carried out.

52. Use of *de minimis* SILs to permit sources with insignificant impacts does not mean that an increment exceedance goes unregulated or unaddressed if new sources with legally *de minimis* insignificant impacts are permitted. There are other regulatory tools that are used to address genuine increment exceedance issues in a manner which does not jeopardize new sources with trivial impacts. *See, e.g.* 42 U.S.C. § 7410(k)(5) and 40 C.F.R. § 51.166(a)(3) (for SIP call); 42 U.S.C. § 7413(a)(5) (stop order on construction); WAQSR Ch. 6, § 4(b)(vii-ix) (for variance). The solution is not for Wyoming to deny a permit to new sources such as Dry Fork Station simply because Dry Fork Station has a theoretical and admittedly trivial impact on a modeled increment exceedance.

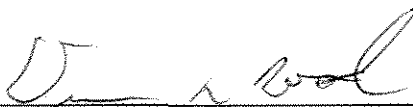
53. Based on all the foregoing findings of fact and conclusions of law, DEQ/AQD's use of SILs in the modeling of SO₂ in the NCIR was in accordance with the WEQA and the WAQSR.

ORDER

IT IS THEREFORE ORDERED that:

1. The Department of Environmental Quality and Basin Electric Power Cooperative's Motions for Summary Judgment in regard to the issue of use of SIL's in the modeling of SO₂ in the NCIR is GRANTED. Protestants' Motion for Summary Judgment on this same issue is DENIED, and the Department of Environmental Quality's decision to issue the Air Quality Permit #CT-4631 as it relates to the contentions set forth in Count VIII of the November 1, 2007 Protest and Petition for Hearing is affirmed.

SO ORDERED this 2 day of ^{December}~~November~~, 2008.



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CERTIFICATE OF SERVICE

I, Joe F. Girardin, certify that at Cheyenne, Wyoming, on the 8th day of December, 2008,
I served a copy of the foregoing document by electronic email to the following persons:

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