

BEFORE THE AIR QUALITY CONTROL COMMISSION
STATE OF COLORADO

REBUTTAL STATEMENT OF PUBLIC SERVICE COMPANY OF COLORADO doing
business as XCEL ENERGY

IN THE MATTER OF THE PROPOSED REVISIONS TO AMBIENT AIR QUALITY
STANDARDS REGULATION, REGULATION NUMBERS 3, 7, AND 11 FOR THE
DENVER METROPOLITAN & NORTH FRONT RANGE AREA OZONE ACTION PLAN

Public Service Company of Colorado (“PSCo”), doing business as Xcel Energy, hereby submits its Rebuttal Statement in the above-captioned matter by and through its undersigned counsel. PSCo submits this Rebuttal Statement pursuant to Air Quality Control Commission Procedural Rule 1.5.5(5)(d).

I. EXECUTIVE SUMMARY

PSCo believes that Colorado Revised Statute § 25-7-105.1 prohibits the Air Quality Control Commission (“AQCC”) from adopting the Air Pollution Control Division’s (“APCD’s”) 8-Hour Ozone Attainment Plan – Alternative Proposal #1 as it identifies control measures for inclusion in the State Implementation Plan (“SIP”) that are not necessary for the Denver/North Front Range region to attain the 0.08 ppm 8-hour ozone National Ambient Air Quality Standard (“NAAQS”). EPA mandated modeling and associated weight of evidence analyses demonstrate that the region will attain the standard in 2010 without adoption of the proposed control measures.

PSCo has not identified any other issues to be resolved by the AQCC that have not already been raised by the other parties in their prehearing statements; will not call any witnesses beyond those identified in its Prehearing Statement; and has not identified any exhibits for use at the hearing.

II. RESPONSE TO ISSUES RAISED AT THE PREHEARING CONFERENCE AND IN THE PARTIES' PREHEARING STATEMENTS

Colo. Rev. Stat. § 25-7-105.1 Prohibits the Adoption of the 8-Hour Ozone Attainment Plan – Alternative Proposal 1

Federal law requires the State of Colorado to submit a State Implementation Plan to EPA no later than July 1, 2009, that contains measures necessary for the Denver/North Front Range region to attain the 0.08 ppm 8-hour ozone NAAQS by November 2010. APCD, Denver Metro Area & North Front Range Ozone Action Plan i (Sept. 2008) [hereinafter Action Plan]. The State must demonstrate that these measures will attain the standard through the use of photochemical grid dispersion modeling and a weight of evidence (WOE) analysis supporting the model results if the maximum modeled 8-hour design value is between 0.082 ppm and 0.087 ppm at more than one ozone monitor. *Id.* at I-2, V-9. The photochemical modeling performed by the State “meets EPA’s accepted margin of accuracy; is fully documented; sufficiently accounts for projected future growth in ozone precursor emissions; and was used to determine the effectiveness of NO_x and/or VOC reductions.” *Id.* at I-2.

The State’s modeling demonstrates that all ozone monitors in the non-attainment area will meet the 0.08 ppm 8-hour ozone NAAQS in 2010, based on emissions reductions “expected from existing programs and regulations” (i.e., without any of the measures proposed by APCD in Alternative Proposal 1). Action Plan at V-4. Since the model predicts that four of the monitors will have 8-hour design values in 2010 between 0.082 and 0.084 ppm, the State performed the necessary WOE analysis, described by the State as “a set of supplemental analyses...to support the attainment determination.” *Id.* at V-9, V-10. This WOE analysis supports the modeled attainment results. *Id.* at V-26.

Colorado Revised Statute § 25-7-105.1 prohibits the State from including any provision, standard, or regulation in a SIP that is not required by Part D (non-attainment) or that is otherwise more stringent than the Clean Air Act requires. Colo. Rev. Stat. § 25-7-105.1(1) (2008) (containing other restrictions on the provisions, standards, and regulations that can be included in a SIP). The Clean Air Act only requires that the State develop a SIP to attain the 8-hour ozone NAAQS and does not mandate any of the controls identified in Alternative 1. Since the Act only requires the State to adopt such measures as are necessary to attain the ozone NAAQS, any measure that is unnecessary to attain the standard is “more stringent than” federal law and cannot be included in the SIP pursuant to § 25-7-105.1. This conclusion is supported by past AQCC, APCD, and EPA actions. *See, e.g.,* 5 Colo. Code Regs. § 1001-14 VIII.G (documenting the AQCC’s removal of two control measures from the SIP related to Colorado Spring’s status under the carbon monoxide NAAQS since the provisions were “not necessary to maintain the NAAQS” and should not be included pursuant to § 25-7-105.1); 5 Colo. Code Regs. § 1001-20 I.D (containing AQCC’s approval of revisions in the SIP to maintain the PM₁₀ NAAQS in Pagosa Springs and Telluride as they did “not include any provisions that are not necessary to maintain the NAAQS, or that are otherwise more stringent than requirements of the federal act”); Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado, Carbon Monoxide Attainment Demonstrations and Related SIP Elements for Denver

and Longmont, 62 Fed. Reg. 10690, 10692 (Mar. 10, 1997) (determining that the APCD proposed 3.1% oxygenated fuels program was not “more stringent than the Act requires” under § 25-7-105.1 as the “SIP would be unable to demonstrate attainment of the NAAQS” without it); APCD, Carbon Monoxide Redesignation Request and Maintenance Plan for the Fort Collins Area 6 (July 18, 2002) (selecting the “no-controls-after-2003” option based on a modeling demonstration of maintenance with the carbon monoxide NAAQS and rejecting all additional control options under § 25-7-105.1). Adoption of Alternative 1 would therefore violate state law since modeling demonstrates attainment without any further control measures.

As previously mentioned, the State’s modeling meets EPA’s accepted margin of accuracy and its conclusions are further supported by the supplemental WOE analysis. This modeling conforms with all federal requirements necessary to demonstrate attainment and “is the best tool available to assess progress in reducing ozone concentrations and to integrate the hourly variable inputs of emissions, meteorology and chemistry over” an ozone season. Action Plan at V-2, V-3. Second-guessing EPA’s requirements for an attainment demonstration based on a concern over a margin of safety and allowing control measures to be included in the SIP that the model deems unnecessary to meet the NAAQS would violate § 25-7-105.1 and set a dangerous precedent. Such an action would be taken without any restraint or guidance on determining a safety factor and would ignore the fact that margins of error are unbiased. If a model has a margin of error of 5% and predicts a value of 100, for example, it is equally likely that the actual value will be 95 or 105. Therefore, including measures that a model determines to be unnecessary for attainment may in fact be even more unnecessary than predicted. To the extent that the AQCC wants to adopt measures that provide for an additional safety factor beyond that ensured by the model assumptions and WOE analyses, it cannot include them in the SIP.

III. ISSUES TO BE RESOLVED BY THE COMMISSION

PSCo has identified the issue discussed above for resolution by the AQCC. PSCo has not identified any other issues to be resolved by the AQCC that have not already been raised by the other parties in their prehearing statements.

IV. EXHIBITS


PSCo has not identified any exhibits for use at the hearing, but it reserves the right to refer to documents relevant to the ozone rulemaking including, but not limited to: Federal Register notices; federal and state statutes, regulations, guidance, and testimony; and judicial opinions. PSCo also reserves the right to refer to the exhibits of any other parties to this rulemaking. This section supersedes the section in PSCo’s Prehearing Statement entitled “Exhibits/Written Testimony.”

V. REBUTTAL WITNESSES

PSCo may call the individuals identified in its Prehearing Statement as rebuttal witnesses, if necessary.

Respectfully submitted this 25th day of November, 2008.

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ATTORNEYS FOR PUBLIC SERVICE
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 25th day of November, 2008, a true and correct copy of the foregoing REBUTTAL STATEMENT OF PUBLIC SERVICE COMPANY OF COLORADO was delivered via email to the following:



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