Decision No. R25-0319

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0369G

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF THE SELECTION OF PILOT PROJECTS TO PROVIDE THERMAL ENERGY SERVICE AND APPROVAL TO RECOVER THROUGH THE DEMAND SIDE MANAGEMENT COST ADJUSTMENT THE COMPANY'S COMMUNITY OUTREACH AND PROJECT DESIGN EFFORTS TO DEVELOP SELECTED PILOTS.

RECOMMENDED DECISION GRANTING MOTION TO APPROVE SETTLEMENT AGREEMENT, APPROVING SETTLEMENT AGREEMENT, AND GRANTING APPLICATION AS MODIFIED BY THE SETTLEMENT AGREEMENT

Issued Date: April 24, 2025

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I. PROCEDURAL HISTORY

1. On August 29, 2024, Public Service Company of Colorado ("Public Service" or the "Company" or "PSCo") filed its Verified Application ("Application") of Public Service Company of Colorado for Approval of Its Thermal Energy Network Pilot Development. In its Application, Public Service requests that the Colorado Public Utilities Commission ("Commission") issue a decision approving the Company's proposed Thermal Energy Network ("TEN") Pilot Initiative (the "TEN Pilot Initiative").

2. In its Notice of Application Filed, filed August 30, 2024, the Commission gave notice of the Application and set an intervention period.

3. On September 12, 2024, the Petition for Leave to Intervene of the City and County of Denver ("Denver") was filed by the City and County of Denver, Colorado ("Denver's Intervention").

4. On September 12, 2024, the Office of Utility Consumer Advocate ("UCA") timely noticed its intervention as a matter of right.

5. On September 30, 2024, the Colorado Energy Office ("CEO") timely noticed its intervention as a matter of right.

6. On October 2, 2024, the Trial Staff of the Colorado Public Utilities Commission ("Staff") timely noticed its intervention as a matter of right.

7. On October 9, 2024, the Commission referred this matter by minute entry to an Administrative Law Judge ("ALJ").

8. By Decision No. R24-0792-I, issued October 31, 2024, the ALJ, among other things: acknowledged the interventions of Staff, UCA, and CEO; granted Denver's Intervention; extended the deadline for a Commission Decision by 130 days; adopted a procedural schedule to govern this Proceeding; and scheduled an evidentiary hearing in this matter for March 13-14, 2025.

9. By Decision No. R25-0134-I, issued February 26, 2025, based on the parties' unopposed request,[1] the undersigned ALJ, among other things, modified the Procedural schedule in this Proceeding, set a deadline of February 27, 2025 for the filing of the Settlement Agreement and Supporting Motion; and set a deadline of March 5, 2025 for the filing of Settlement Testimony & CEO's Testimony in Opposition to the Settlement Agreement.

10. On February 27, 2025, the Company filed its Motion to Approve Comprehensive Settlement Agreement and Request for Waiver of Response Time ("Motion"). To the Motion, the Company attached the Comprehensive Settlement Agreement ("Settlement Agreement") on behalf of the Company, Staff, UCA, and Denver (the "Settling Parties"). CEO is not a signatory to the Settlement Agreement.[2]

11. On March 5, 2025, Staff, the Company, UCA, and CEO filed their respective Settlement Testimony.[3]

12. On March 14, 2025, an evidentiary hearing in this matter was held as scheduled. All parties appeared and were represented by counsel. During the hearing, Hearing Exhibits 100, 101, 102, 103, 104, 105, 106, 107, 200, 201, 300, 301, 400, 401, 500, 501, 502 and 600 were

[1] *See* the Notice of Comprehensive Settlement in Principle, Unopposed Joint Motion to Amend Procedural Schedule, and Request for Waiver of Response Time, filed by the Company on February 19, 2025.
[2] Settlement Agreement at p. 2.
[3] See Hearing Exhibits 105, 201, 301, 401, and 502.

admitted into evidence, Mr. Michael Pascucci testified on behalf of the Company, and Mr. Keith Hay testified on behalf of CEO.

13. On April 3, 2025, the Company, Staff, UCA and CEO filed their respective Statements of Position ("SOPs").

II. RELEVANT LAW

14. Pursuant to § 40-3-101(1), C.R.S., "[a]ll charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable…"

15. Commission decisions approving settlement agreements need to be deemed just and reasonable by the Commission.[4]

16. Rule 1408(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations*, 723-1 states:

> The Commission encourages settlement of contested proceedings. Any Settlement Agreement shall be reduced to writing and shall be filed along with a motion requesting relief with regard thereto. Those supporting approval of a Settlement Agreement are encouraged to attest that they are not aware of a Settlement Agreement's violation of any applicable laws and to file testimony providing adequate facts (i.e., not in the form of conclusory statements) demonstrating that the agreement meets the applicable standard, be it an applicable law, Commission decision, Commission rule, or in the public interest.

[4] *Holcim U.S. Inc. v. Colorado Pub. Utilities Comm'n*, 562 P.3d 55, 60 (Colo. 2025). (affirming the PUC's approval of a Settlement Agreement related to cost recovery mechanisms and emphasizing the Commission's role in ensuring that such agreements are just and reasonable); *see also*, § 40-6-115(3), C.R.S. (proscribing that upon review of a Commission decision by the district court, the district court shall determine whether the Commission decision is "just and reasonable").

17. Section 1 of Colorado House Bill ("HB") 23-1252 (the "Thermal Energy Act")[5] states:

> SECTION 1. Legislative declaration. (1) The general assembly finds that:
>
> (a) Colorado adopted Senate Bill 21-264, enacted in 2021, that requires regulated gas utilities to develop a clean heat plan to meet a four percent reduction below 2015 greenhouse gas emission levels by 2025 and a twenty-two percent reduction below 2015 greenhouse gas emission levels by 2030;
>
> (b) Gas utility workers have helped provide reliable energy throughout the state. Affording gas utilities a pathway to providing thermal energy service in the state also provides gas utility employees an opportunity to utilize many of their existing skills for clean energy jobs for the utility.
>
> (c) Colorado residential and business utility customers have been affected by recent trends in gas prices. Helping these utility customers shift from gas to clean thermal energy service could provide long-term price stability for heating and cooling their homes and businesses and for heating water in their homes and businesses.
>
> (d) The use of thermal energy networks can help reduce greenhouse gas emissions from buildings and enhance resilience while supporting beneficial electrification. Utility-scale thermal energy projects and investments can especially help the state achieve these goals.
>
> (2) The general assembly declares that:
>
> (a) Requiring gas utilities to present different approaches for cost recovery of investments in thermal energy service, and requiring the public utilities commission to consider the cost to customers under each approach presented, will help minimize the long-term cost to utility customers for the cost of transitioning to clean thermal energy service;
>
> (b) It is important to pursue the decarbonization of buildings in the state in a manner that:
>
> (I) Is affordable and accessible;

[5] The Thermal Energy Act was signed into law on May 11, 2023, and became effective on August 7, 2023. The Thermal Energy Act was codified in §§ 40-3.2-105.7, 40-3.2-108, and 40-4-121, C.R.S. and repealed the "Geothermal Heat Suppliers Act," which was previously codified in Article 40 of Title 40 of the Colorado Revised Statutes.

(II) Preserves existing living-wage jobs while also creating new living-wage jobs; and

(III) Retains the knowledge and experience of the existing utility union workforce;

(c) Passage of this act is intended for the purposes of:

(I) Removing the legal barriers to utilities' development of thermal energy networks;

(II) Requiring the public utilities commission to evaluate utilities development of thermal energy networks; and

(III) Immediately commencing the piloting of thermal energy network projects by certain utilities; and

(d) In evaluating a gas utility's application to provide thermal energy service, the public utilities commission should consider any potential that the utility may have to reuse existing infrastructure that otherwise would result in stranded assets.

18. Section 40-4-121(3), C.R.S.[6] states:

(a) On or before September 1, 2024, a large gas utility shall submit to the commission for review and approval at least one pilot program, consisting of one or more pilot projects, to provide thermal energy service in its service area.

(b) A large gas utility may propose more than one pilot thermal energy network program pursuant to this subsection (3) by filing separate applications for review and approval of additional pilot programs with the commission on or before September 1, 2026.

(c) In developing a pilot program proposal, a large gas utility shall propose as part of the proposed pilot program at least one pilot project that serves residential customers located in a:

(I) Disproportionately impacted community;

(II) Mountain community served by the large gas utility; or

[6] Section 40-4-121, C.R.S. comprises a portion of the Thermal Energy Act. *See supra*, footnote no. 5.

(III) Utility service area that the commission has determined is capacity constrained or that is targeted for electrification in a utility clean heat plan or beneficial electrification plan.

(d) A large gas utility's pilot thermal energy network program proposal must:

(I) Include specific customer protection plans that promote stable utility rates;

(II) Be made publicly available on the commission's website; and

(III) If approved, be implemented in compliance with the labor standards set forth in section 40-3.2-105.7.

(e) In considering whether to approve a large gas utility's application proposing a pilot thermal energy network program, the commission shall consider the long-term effects that the proposed pilot thermal energy network program would have on the state's utility workforce.

(f) A large gas utility may propose a pilot thermal energy network program as part of the large gas utility's application for approval of a clean heat plan pursuant to section 40-3.2-108 or a gas DSM program plan pursuant to section 40-3.2-103 (3) or as part of a strategic issues application; except that a pilot thermal energy network program applied for as part of a clean heat plan does not count toward the clean heat plan cost caps set forth in section 40-3.2-108 (6)(a)(I).

(g) In proposing a pilot thermal energy network program pursuant to this subsection (3), a large gas utility shall present to the commission options for how the large gas utility may fund the pilot program, including options that involve the use of any federal or private sources of funding or rate recovery from nonresidential customers to manage impacts upon residential customers. A pilot thermal energy network program application must include a current or forward-looking rate structure to promote stable customer billing.

III. SETTLEMENT AGREEMENT AND SETTLEMENT TESTIMONY

A. The Settling Parties' Positions

1. The Terms of the Settlement Agreement

19. As more fully set forth in the Settlement Agreement, the Settling Parties agreed to the following terms: [7]

a. Project Sites for Thermal Energy Network Development[8]

i. Public Service will commence Phase II development activities for the South Frisco and Ruby Hill project sites.[9]

ii. Each site will have one back-up anchor customer. There will be no back-up project sites.

iii. If a pilot site is deemed infeasible, Public Service will provide written notice within 14 days and propose a replacement pilot project in its next Clean Heat Plan ("CHP") filing, anticipated in 2026, preferably of the same project type.

b. Estimated Costs and Cost Recovery[10]

i. The Settling Parties agree to a total budget of $2.55 million, which includes a 15% contingency and reflects a deduction of $417,000 from the Clean Heat Plan Market Innovation Fund. 4.1. If additional funds are needed, Public Service will notify the parties in writing, justify the request, and convene the parties within 30 days. The Company bears the burden of establishing the prudency of any incremental costs.

ii. The Company will pursue federal, state, and private funding to offset project costs and reduce ratepayer impact.

iii. Recovery of actual incurred costs up to $2.55 million is permitted through the DSMCA-G[11] rider. Costs exceeding this amount may be requested for recovery, subject to party rights to protest. Actual incurred costs will be reported in the April 1 DSMCA-G filing following the year in which costs were incurred.

[7] The following is intended as a summary of the main terms of the Settlement Agreement, rather than a complete recitation of the same.

[8] Settlement Agreement at pp. 3-4.

[9] *See also*, Hg. Ex. 101 at 10:10-11:3 (discussing Phase I and Phase II of the TEN Pilot Initiative) and Hr. Ex. 102 at 25: Table CSV-D-4.

[10] Settlement Agreement at pp. 4-5.

[11] DSMCA-G is defined as "Demand Side Management Cost Adjustment-Gas." *See* Settlement Agreement at p. 5, ¶6.

c. Reporting, Outreach, and Stakeholder Engagement[12]

i. The Company will file a written update by December 10, 2025, including: financial updates and cost variances; status of funding efforts, engineering and design milestones; and community engagement data.

ii. A final comprehensive report will be filed with any future application seeking construction approval, summarizing development findings, feasibility, financial accounting, and stakeholder feedback.

iii. The request for proposal ("RFP") for community engagement consultant will require: a written report (to be included in the December 2025 filing); Outreach summaries to disproportionately impacted ("DI"), income-qualified ("IQ"), and mountain communities; and Bilingual proficiency in English and Spanish.

iv. Public Service agrees to adhere to community engagement principles, including: Multilingual communications; Various engagement formats (mail, email, meetings, events); and Engagement with local governments and community-based organizations.

d. Public Service and Denver Informational Commitments[13]

i. Although the downtown Denver Ambient Loop[14] is not regulated by the Commission, the Company and Denver agree to:

1. Collaborate on design and engineering, funded by Denver.

2. Allow Public Service to raise and document concerns about the design of the TEN Pilot Initiative.

3. Explore and recommend approaches to Schedule, cost, rate design, funding, and customer protections.

4. After completion of design, file results and a summary report in this Proceeding and make recommendations on whether to continue, modify, or develop the project outside the scope of Public Service's natural gas utility.

e. General Provisions[15]

i. The Settlement Agreement is non-precedential, except where stated.

[12] *Id*. at pp. 6-8.
[13] *Id*. at pp. 9-11.
[14] *See,* Hr. Ex. 500 at 5:10-15, 5:24-6:6, 7:15-8:21, 10:5-8, 16:13-16, 21:17-23:9, 23:21-24:3, 24:20-25:3, 25:14-26:2, 26:15-19, 30:12-20, 32:8-20, 32:22-33:9, 33:12-34:18, 36:3-9, 36:12-37:7, 37:17-23, 37:23-38:3 and Attachment DS-3 to Hr. Ex. 500 at pp. 2, 4 (describing the Denver Ambient Loop ("Ambient Loop"), noting Denver's support of the same, setting forth the reasons for Denver's support of the Ambient Loop, and discussing the Ambient Loop's relationship with the TEN Pilot Initiative).
[15] Settlement Agreement at pp. 11-14.

ii. The Agreement is just, reasonable, and in the public interest and should be approved by the Commission.

iii. Negotiations were conducted under Rule 408 of the Colorado Rules of Evidence.

iv. No waivers are implied beyond the express terms.

v. All parties agree to support the Settlement unless modified by the Commission.

vi. Parties will jointly seek waivers of Commission rules, if necessary, to implement the Agreement.

vii. This is an integrated agreement; no external representations apply.

viii. If the Commission modifies the Agreement, parties may object within 10 days and withdraw.

ix. No legal presumption as to the drafter applies.

x. The Agreement may be executed in counterparts and electronically.

2. The Settling Parties' Positions

a. PSCo

20. In support of the Commission's approval of the Settlement Agreement, PSCo asserts that the agreement is "just and reasonable and in the public interest" and should be approved "without modification".[16] PSCo emphasizes that the Settlement fulfills the intent of HB23-1252 by advancing two TEN pilot projects: the South Frisco TEN project and the Ruby Hill TEN project.[17] PSCo states the TEN Pilot Initiative complies with statutory requirements for siting in DI, IQ, gas-constrained, or mountain communities.[18] The Company highlights that the Settlement Agreement allows for a "measured and appropriate framework" to explore the viability of TENs, while ensuring cost containment and administrative efficiency through the DSMCA-G mechanism.[19]

[16] PSCo's Statement of Position at pp. 1-2.
[17] Hr. Ex. 105 at 8:13-14, 8:17-9:2.
[18] *Id*.
[19] PSCo's Statement of Position at p. 8, ¶ 16.

21. PSCo argues that the Settlement Agreement represents a balanced compromise among the Settling Parties and that the extensive negotiations reflect a diversity of stakeholder interests.[20] In addition to approving the Settlement Agreement, PSCo requests that the Commission also approve the accompanying tariff revision (Attachment MVP-2 to Hr. Ex. 105) to implement cost recovery through a compliance advice letter filing.[21]

22. PSCo also defends the Settlement Agreement's exclusion of CEO's requested modifications. The Company argues that CEO's proposed changes, including expanding the budget from $2.55 million to $5.49 million and granting flexibility to pursue entirely new backup pilot sites, would undermine the negotiated structure and introduce inefficiencies.[22] PSCo states that should either of the two pilot projects prove infeasible, it will bring forward alternative pilot proposals in the next CHP filing (expected in 2026), or consider alternatives under HB24-1370 or the Commission's TEN-related M-docket.[23]

23. As a part of its information filings in this Proceeding, PSCo commits to describing its collaboration with the Denver on a non-jurisdictional pilot, the Ambient Loop, to evaluate a chilled water-based ambient TEN.[24] PSCo stresses that this project is being funded by Denver and is not subject to Commission regulation, but its outcomes will inform future TEN initiatives.[25]

24. PSCo asserts that the Settlement Agreement's reporting requirements, outreach framework, and cost recovery provisions already reflect robust oversight and transparency.[26]

[20] *Id*. at p. 1.
[21] Hr. Ex. 105 at 6:23-7:3.
[22] PSCo's Statement of Position at pp. 8-12.
[23] Hr. Ex. 105 at 9:19-10:2 ,10:11-15.
[24] *Id*. at 22:28-23:18.
[25] *Id*. at 21:7-14.
[26] *Id*.; PSCo's Statement of Position at pp. 10-11.

Therefore, PSCo argues that CEO's additional requests for quarterly updates and mandated consultation on engagement activities are unnecessary and would intrude upon PSCo's managerial discretion.[27] PSCo notes that: "[t]he Commission regulates; it does not manage".[28]

25. In conclusion, PSCo urges the Commission to approve the Settlement Agreement as filed, emphasizing that modifying the Settlement Agreement would jeopardize the consensus achieved and could lead to withdrawal by one or more Settling Parties under § C(8) of the Settlement Agreement.[29]

b. UCA

26. UCA fully supports the Settlement Agreement and urges the Commission to approve it without modification.[30] UCA states that the Settlement Agreement "represents a reasonable resolution of all issues raised in this proceeding in a manner that is in the public interest" and reflects key recommendations made in its answer testimony, including limiting the number of pilot TEN projects, capping cost recovery to actual incurred costs, and ensuring prudent budget contingencies and oversight.[31]

27. UCA highlights that the Settlement Agreement addresses its concern over project scope and cost by reducing the number of pilot projects from five projects to two projects, which UCA describes as "a targeted and financially prudent approach to a nascent technology" that avoids nearly $5 million in additional ratepayer costs.[32] The $2.55 million budget cap (inclusive of a 15 percent contingency) and the use of the DSMCA-G rider for cost recovery of only actual

[27] PSCo's Statement of Position at pp. 10-11.
[28] PSCo's Statement of Position at p. 11 (*quoting Colorado-Ute v. Public Utilities Comm*., 760 P.2d 627 (Colo. 1988); *Colo Municipal League v. Public Utilities Comm*., 473 P.2d 960 (Colo. 1970).
[29] *Id*. at p. 12.
[30] UCA's Statement of Position at p. 3
[31] *Id*. at pp. 3-4.
[32] Hr. Ex. 301 at 8:21-9:5.

incurred costs directly aligns with UCA's recommendations. UCA also supports the Settlement Agreement's requirement that Public Service pursue federal, state, and private grant funding, with any such funds credited back to reduce project costs.[33]

28. Additionally, UCA supports the siting and feasibility of the selected projects, which were chosen following a rigorous scoring and technical assessment by external consultants Buro Happold Consulting Engineers ("BH") and were among the top-ranked options.[34] UCA rejects CEO's request to add backup pilot projects, calling it speculative and unsupported by evidence, noting that the BH scoring already accounted for feasibility and customer willingness.[35] UCA argues that if either site proves infeasible, the Settlement Agreement already provides a clear path to propose replacement projects in Public Service's 2026 CHP filing, a timeframe that aligns with the Company's operational and planning capacities.[36]

29. UCA also emphasizes its support for the stakeholder engagement provisions, including multilingual outreach, and the requirement that Public Service file a detailed progress report by December 10, 2025. UCA states this reporting framework provides transparency and accountability to ratepayers and stakeholders.[37]

30. In sum, UCA finds that the Settlement Agreement "is just, reasonable, and in the public interest," protects ratepayer affordability, and advances Colorado's statutory decarbonization goals under HB23-1252.[38] UCA strongly opposes CEO's proposed modifications and asks the Commission to approve the Settlement without change.[39]

[33] *Id*. at 9:5-8.
[34] *Id*. at 8:6-17; UCA's Statement of Position at pp. 4-5.
[35] Statement of Position at pp. 4-6.
[36] *Id*. at p. 4; Hr. Ex. 301 at 5:11-17, 10:9-12.
[37] Ex. 301 at 10:15-18; Statement of Position at p. 4.
[38] Statement of Position at p. 4; Ex. 301 at 8:12-17, 11:3-6.
[39] Ex. 301 at 11:9-10.

c. Denver

31. Denver supports the Settlement Agreement and urges the Colorado Public Utilities Commission to approve it as filed.[40] According to Denver, the Settlement Agreement "serves the public interest by meeting statutory requirements in a manner that limits costs borne by customers."[41] Denver strongly supports the inclusion of the Ruby Hill project in Phase II development, stating that this project has a "high likelihood of success due to prior work with the proposed anchor customer and Denver's ability to provide community engagement and other support."[42] Denver identifies the Ruby Hill project as the most promising equity-priority pilot and highlights the Denver Housing Authority's commitment to act as a strong anchor customer, with the Denver offering additional facilitation and potential financial support through its Climate Protection Fund.[43]

32. Denver also supports the terms of the Settlement Agreement relating to the Downtown Ambient Loop project, which it describes as a "key priority" due to the project's potential to replace the City's aging and unsustainable steam heating system and contribute significantly to its decarbonization goals.[44] Denver states that although the Ambient Loop is not subject to the regulated cost recovery process outlined for the Ruby Hill and South Frisco projects, Denver affirms the importance of the informational commitments by PSCo to collaborate on design and feasibility.[45] Denver notes that the Company has agreed to file a final

[40] Hr. Ex. 502 at 5:12-13.
[41] *Id*. at 3:22-23.
[42] *Id*. at 4:2-6 (*citing* Hr. Ex. 500, at 67:11-68:2).
[43] *Id*. at 13:9-14:2.(*citing* Hr. Ex. 500 at 67:19-68:2 and referencing the Climate Protection Fund, Denver's Office of Climate Action, Sustainability and Resiliency, https://denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Climate-Action-Sustainability-and-Resiliency/Cutting-Denvers-Carbon-Pollution/Climate).
[44] *Id*. at 4:7-12.
[45] *Id*. at 7:16-8:2, 9:6-13.

report in this proceeding summarizing design results, feasibility, cost considerations, and a recommendation as to whether the project should proceed as a regulated or non-regulated initiative.[46]

33. In addition, Denver praises the Settlement Agreement's improvements to PSCo's original proposal concerning reporting and community engagement.[47] Denver particularly values the requirement for a December 2025 report with detailed financial, technical, and outreach updates and the principles for multilingual, inclusive stakeholder engagement.[48] Denver asserts that these terms will "significantly improve outcomes" by building trust and facilitating project implementation in DI communities, such as Ruby Hill.[49]

34. In sum, Denver endorses the Settlement Agreement as a cost-effective and strategically focused plan that advances three promising TEN projects, Ruby Hill, South Frisco, and the Ambient Loop, while offering accountability, transparency, and stakeholder collaboration. Denver emphasizes that these efforts align with its climate goals and will help address systemic issues in the downtown heating infrastructure while maintaining affordability.[50]

d. Staff

35. Is support of the Settlement Agreement Staff states that the it is "just, reasonable, and in the public interest" and recommends Commission approval without modification.[51] Staff's initial concerns, as raised in its Answer Testimony,[52] included the number of sites studied in Phase II, potential for excessive cost recovery, lack of clarity in feasibility criteria, and

[46] *Id*. at 9:10-10:2.
[47] *Id*. at 14:5-10.
[48] *Id*. at 14:11-15:2.
[49] *Id*. at 15:5-11.
[50] *Id*. at 8:10-12, 11:11-15, 12:19-13:6, 15:3-19.
[51] Hr. Ex. 201 at 19:4-7; Staff's Statement of Position at p.7.
[52] *See* Hr. Ex. 200.

insufficient transparency and community engagement.[53] The Settlement Agreement addresses these issues by limiting Phase II activities to two pilot sites, establishing a budget framework of $2.55 million, and implementing enhanced regulatory oversight and public reporting.[54]

36. The Settlement Agreement requires PSCo to "provide written notice to the Commission" if either South Frisco or Ruby Hill proves infeasible, and that any backup project must be proposed in PSCo's next CHP filing in 2026.[55] Staff emphasizes this process as a prudent safeguard: "embarking on a third project after two project sites... have failed could result in 'throwing good money after bad.'"[56] Rather than pre-approving additional projects as CEO proposed, the Settlement Agreement allows the Commission to fully assess the reasons for any site failure before authorizing new efforts.[57]

37. Staff also secured a reduction in the proposed budget for Phase II from $7.26 million to $2.55 million, inclusive of a 15 percent contingency.[58] The Company's recovery is limited to actual costs incurred and is not based on forecasts.[59] The Company must justify any expenditures beyond the agreed cap, and all parties retain the right to challenge cost recovery in future DSMCA-G filings.[60] As Staff's witness, Mr. Patrick LaMere explains, this structure "mitigat[es] the risk of runaway spending while allowing the Company to move forward... in a measured and responsible manner."[61]

[53] Hr. Ex. 201 at 6:15-19.
[54] *Id*. at 7:7-8:2, 8:6-18.
[55] *Id*. at 18:10-13; Settlement Agreement at p. 3., § I., ¶3.
[56] Hr. Ex. 201 at 12:16-18.
[57] *Id*. at 13:7-13:10; Staff's Statement of Position at p. 6; Settlement Agreement at pp. 3-4., § I., ¶3.
[58] Hr. Ex. 201 at 13:19-14:2; Settlement Agreement at p. 4, § II., ¶4.
[59] Hr. Ex. 201 at 14:12-14; Settlement Agreement at p. 4, § II., ¶4 and p. 6 § II., ¶6.
[60] Hr. Ex. 201 at 14:14-17; Settlement Agreement at p. 4, § II., ¶4.1.
[61] Hr. Ex. 201 at 15:2-5.

38. According to Staff, the Settlement Agreement enhances transparency through reporting requirements.[62] PSCo is required to submit a report to the Commission by December 10, 2025, detailing "financial updates," "engineering and design progress," "community engagement metrics," and "efforts to secure external funding."[63] A final report will be submitted with any future application for construction, documenting Phase II outcomes and feasibility results.[64]

39. Staff and the Company have also agreed to strengthen the Company's community engagement requirements. The Company must employ multilingual communications, varied outreach methods, and partnerships with community-based organizations.[65] A consultant will be hired to conduct and document engagement efforts, including "survey feedback from stakeholders," "outreach activities tailored to the specific needs of disproportionately impacted, income-qualified, and mountain communities," and "documentation of customer feedback... and how the feedback was addressed."[66]

40. In its SOP and Hr. Ex. 201, Staff opposes CEO's recommendation to pre-approve two backup projects with an expanded budget. Staff argues that CEO's proposal lacks sufficient scrutiny, would commit ratepayer funds prematurely, and offers no opportunity for stakeholder input if new projects are pursued via a notice-only process.[67] Staff contends that a pause before pursuing new projects is appropriate, given the novel nature of TEN technology in Colorado.[68]

[62] Hr. Ex. 201 at 8:13-16; Staff's Statement of Position at p. 5; Settlement Agreement at pp. 7-8, § III, ¶¶7, 8, 9, and 9.1.
[63] Hr. Ex. 201 at 16:11-17; Settlement Agreement at p. 6, § III, ¶7.
[64] Hr. Ex. 201 at 17:3-6; Settlement Agreement at p. 7, § III, ¶8.
[65] Hr. Ex. 201 at 17:17-18:3; Settlement Agreement at p. 8, § III, ¶¶9.2, 10.1, 10.2.
[66] Settlement Agreement at pp. 7-8, § III, ¶9.1.
[67] Hr. Ex. 201 at 13:1-10, 14:5-10, 14:17-15:5; Staff's Statement of position at p. 3.
[68] Hr. Ex. 201 at 11:15-12:2, 12:7-13:10; Staff's Statement of position at pp. 5-6.

As Staff explains, "it is reasonable to pause before committing ratepayer dollars on less viable backup projects that likely carry more risks than the ones that failed."[69]

41. Staff concludes that the Settlement Agreement reflects a balanced compromise that advances the objectives of HB23-1252 while maintaining regulatory integrity and protecting ratepayers.[70] Accordingly, Staff urges the Commission to approve the Settlement Agreement in full and without modification.[71]

B. CEO's Position

42. CEO declined to sign the Settlement Agreement despite supporting several of its provisions, due to CEO's concerns regarding the lack of approved backup pilot projects and the adequacy of the proposed project budget. In its Settlement Agreement Testimony and Statement of Position, CEO emphasized that HB23-1252 mandates timely development of at least one TEN pilot, and that a failure to approve backup projects in this proceeding jeopardizes that goal.[72] While the Settlement Agreement authorizes Phase II development for the South Frisco and Ruby Hill sites, CEO argued that it is inadequate to postpone backup project identification until the Company's 2026 CHP proceeding.[73] CEO warned that such a delay could result in a three-year postponement of viable TEN pilot development.[74] As stated by Keith M. Hay in his testimony, "[d]elaying the Commission's approval of a backup only delays the potential implementation of a thermal pilot if one is necessary,"[75] and "CEO strongly opposes the exclusion of specific

[69] Staff's Statement of Position at p. 5.
[70] Hr. Ex. 201 at 7:17-8:2, 13:17-19, 19:4-7.
[71] Staff's Statement of Position at p. 7; Hr. Ex. 201 at 19:5-7.
[72] Hr. Ex. 401 at 10-13, CEO's Statement of Position at p. 7.
[73] Hr. Ex. 401 at 10:1-5; CEO's Statement of Position at pp. 6-7.
[74] *Id*.
[75] Hr. Ex. 401 at 5:10-12.

backup projects in the Settlement Agreement, which is the primary reason CEO did not join the Settlement Agreement."[76]

43. CEO's proposal seeks Commission approval of two backup projects in addition to the two primary ones, asserting that this approach is necessary to reduce project risk and ensure that at least one pilot proceeds to construction.[77] CEO's testimony explained, "CEO views backup projects, and any associated budget, as a contingency if the primary projects are unable to proceed,"[78] and "approving both primary project and backup, or contingency, projects is more likely to result in a project getting built."[79] CEO recommended backup projects be selected from viable candidates already identified in the record and urged the Commission not to restrict backup projects to the same community-type category as the failed primary projects (e.g., DI communities or mountain communities).[80] CEO also proposed a process whereby the utility could file a Notice with the Commission if a primary project becomes unviable, outlining the reasons for the failure and the plan to transition to a backup site.[81]

44. Regarding project funding, CEO opposed the Settlement Agreement's $2.55 million not-to-exceed budget for Phase II design and engagement, which includes a 15 percent contingency and accounts for $417,000 already approved through the Clean Heat Plan Market Innovation Fund. CEO argued that this amount was insufficient to support the development of backup projects if needed.[82] In contrast, CEO proposed a tiered budget approach that allows for spending up to $5.49 million in total if both backup projects are pursued.[83] As described in its

[76] Hr. Ex. 401 at 10:1-2.
[77]Hr. Ex. 401 at 9:12-16; CEO's Statement of Position at pp. 4, 5.
[78] Hr. Ex. 401 at 5:12-13.
[79] *Id*. at 5:14-16.
[80] *Id*. at 10:15-19; CEO's Statement of Position at pp.7-8.
[81] Hr. Ex. 401 at 14:17-15:10.
[82] Hr. Ex. 401 at 5:9-18; CEO's Statement of Position at p. 10.
[83] *Id*.

settlement agreement testimony, "CEO suggests the Commission approve a budget of up to $5.49 million, which includes $2.55 million for two primary projects and $1.47 million per project for two backup projects."[84] This proposal builds on the Company's own per-project cost estimates but applies a more modest 15 percent budget contingency (rather than the Company's initially-proposed 20 percent budget contingency) and includes budget controls that require unused funds from primary projects to be applied before accessing backup funds.[85] CEO stressed that this framework balances fiscal responsibility with the need for regulatory agility in developing TEN pilots.[86]

45. CEO further asserts that approving its proposal would not constitute an unreasonable financial risk. In its SOP, CEO noted that the additional $3 million cost associated with including two backup projects is "a small incremental amount compared to what the Company spends on gas pipeline safety each year (approximately $500 million per year over last 10 years)."[87] CEO also suggested that additional Clean Heat Plan Market Innovation Funds could be tapped to offset design costs for backup projects.[88] Importantly, CEO rejected the characterization advanced by UCA that TENs represent a "'nascent technology.'"[89] CEO states that TEN systems have been in use for over a century in Europe and are already operating in Colorado, citing Colorado Mesa University's geothermal loop system and stating that "the novel aspect of this application is for a Colorado utility to implement a TEN with multiple customers."[90]

[84] Hr. Ex. 401 at 18:3-5; CEO's Statement of Position at p. 10.
[85] Hr. Ex. 401 at 15:4-6, 17:18-18:8; CEO's Statement of Position at pp. 9-10.
[86] CEO's Statement of Position at pp. 4, 11-12.
[87] CEO's Statement of Position at p. 10.
[88] *Id*.
[89] *Id*. at p. 8.
[90] *Id*. (*citing* Hr. Ex. 102, Direct Testimony and Attachments of Christine S. Viney, Attachment CSV-3 and Hr. Trans. March 14, 2025, at 38:14-18).

46. CEO further supports imposing additional reporting and community engagement requirements on the Company, asserting that such enhancements are necessary to ensure transparency, accountability, and meaningful stakeholder participation in the development of TEN pilot projects.[91] CEO recommends that the Company be required to provide quarterly updates during its DSM stakeholder meetings, with slides from those meetings filed in the proceeding.[92] CEO explains this would "help… inform the parties and the Commission of any progress or roadblocks the Company encounters throughout the design and engagement phase,"[93] noting that "more frequent updates are important for transparency."[94] In addition, CEO urges that that the Company be directed to consult with CEO on community engagement activities, highlighting that CEO brings relevant experience from working on other thermal energy projects and from its joint responsibilities under HB24-1370.[95] This collaboration, CEO contends, would "allow both entities to share lessons learned and make engagement efforts consistent where appropriate"[96]

47. While CEO generally supports collaboration between the Company and Denver on the Ambient Loop project, it emphasizes the need for greater clarity, documentation, and Commission oversight in light of uncertainties in the current record.[97] First, CEO highlights that although Denver intends to self-fund the next design phase, PSCo is still obligated under the Settlement Agreement to submit a filing analyzing Denver's work and providing its own recommendations.[98] CEO points out that "Public Service would incur costs associated with this

[91] *Id*. at pp. 12-13.
[92] *Id*. at p. 12.
[93] *Id*.
[94] Hr. Ex. 401 at 22:9-10.
[95] *Id*. at 21:19-21; CEO's Statement of Position at p. 13.
[96] Hr. Ex. 401 at 23:1-3.
[97] CEO's Statement of Position at 13-14; Hr. Ex. 401 at 25:15-16, 25:19-28:2.
[98] Hr. Ex. 401 at, 25:3-5, 26:17.

filing and analysis" and notes that "neither Denver nor Public Service has provided an estimate of the cost in this proceeding," nor have they explained how such costs would be recovered.[99] As a result, CEO recommends the Commission require PSCo to track all Ambient Loop-related costs so that the Commission can later determine whether cost recovery is appropriate.[100]

48. In addition, CEO expresses concern about the impact of the Ambient Loop on PSCo's existing regulated steam system.[101] Specifically, CEO notes that municipal customers participating in the pilot currently make up approximately 30 percent of total steam system revenues, and that their departure could lead to a 36 percent rate increase for remaining steam customers, based on prior analyses.[102] CEO cautions that this could encourage those remaining customers to switch to on-site gas boilers, potentially increasing greenhouse gas emissions.[103] Accordingly, CEO recommends that the Commission direct PSCo and Denver to consider the impact on remaining steam customers when evaluating cost allocation and recovery proposals.[104] As CEO puts it, "[t]he success of the Ambient Loop pilot could serve as a foundational building block," but it also "raises concerns about cost equity for remaining steam customers among other questions."[105]

49. Lastly, as it relates to the Ambient Loop, CEO questions the replicability of the Ambient Loop pilot, emphasizing that the downtown steam system is the only Commission-regulated steam system in the state, and therefore "may not present a replicable model for

[99] *Id*. at 26:6-11.
[100] *Id*. at 26:13-15; CEO's Statement of Position at p. 14.
[101] Hr. Ex. 401 at 28:18-27:7; CEO's Statement of Position at p. 15.
[102] Hr. Ex. 401 at 26:16-27:1 (*citing* Hr. Ex. 500, Answer Testimony and Attachments of Daniel Shea, at 29:13-16, 29:16-18).
[103] *Id*. at 27:1-4; CEO's Statement of Position at p. 15.
[104] Hr. Ex. 401 at 27:4-7; CEO's Statement of Position at p. 14.
[105] Hr. Ex. 401 at 25:8-12.

transitioning other sections of the gas system to thermal service."[106] For that reason, CEO suggests this pilot may not be a good candidate for pilot project funding, though it supports PSCo providing Denver with necessary information to advance the project through other avenues, such as a Clean Heat Plan or the HB 24-1370 gas planning process.[107]

50. In summary, while CEO supports many of the Settlement Agreement's provisions, including cost recovery through the DSMCA-G rider, the selection of South Frisco and Ruby Hill as primary projects, and the outreach and reporting mechanisms, it believes that failure to approve backup projects and sufficient budget authority in this proceeding could undermine the statutory directive of HB23-1252. CEO stated: "Having backup projects as a contingency plan is essential to ensuring that the Company has viable projects to propose for construction in its Phase II application."[108] CEO believes that its recommended modifications to the Settlement Agreement would enable a more timely and resilient implementation of TENs and better serve the public interest.[109]

IV. DISCUSSION, ANALYSIS, AND CONCLUSIONS

51. The Commission must determine whether the Settlement Agreement is just, reasonable, and in the public interest pursuant to Rule 1408 of the Rules of Practice and Procedure, 4 CCR 723-1 and § 40-3-101(1), C.R.S. The Settlement Agreement, which is attached as Attachment A to this Recommended Decision and incorporated herein, advances the statutory goals of the Thermal Energy Act, including § 40-4-121(3), C.R.S., by approving two pilot projects sites for Phase II development and establishing cost recovery through the DSMCA-G rider.

[106] *Id*. at 27:11-16.
[107] Hr. Ex. 401 at 27:16-28:2; CEO's Statement of Position at p. 14.
[108] CEO's Statement of Position at p. 4.
[109] *Id*.; Hr. Ex. 401 at 10:3-13.

52. The Settlement Agreement is supported by all parties except one, and even CEO, the nonsignatory party, supports most of it.[110] The undersigned ALJ appreciates CEO's thoughtful and reasoned concerns relating to approval of backup sites for the Company's TEN Pilot Initiative, the funding for the TEN Pilot Initiative, reporting and community engagement requirements, and the Ambient Loop, beyond those set forth in the Settlement Agreement. However, for the reasons stated below, the ALJ will approve the Settlement Agreement without modifications.

53. The ALJ acknowledges CEO's concern regarding the absence of pre-approved backup pilot sites. However, the evidentiary record does not support approval of additional backup projects at this time. The two selected pilot sites were thoroughly vetted through an external scoring process and identified as the most viable options. If either project proves infeasible, the Settlement Agreement provides a mechanism for Public Service to propose a replacement project in its next CHP filing, due by July 1, 2026. This approach allows the Commission to reassess feasibility in light of any lessons learned and ensures a more informed process before proceeding with additional investments.

54. The ALJ further finds that increasing the Phase II budget cap to $5.49 million, as proposed by CEO, is not supported by the record in this Proceeding. The existing $2.55 million budget, which includes a 15 percent contingency, reflects a negotiated compromise among the Settling Parties and is designed to fund development of the top-ranked pilot project sites. The Settlement Agreement also provides a process by which PSCo may request additional funding if necessary, subject to Commission review. Approving a larger budget at this stage would not be consistent with the phased, evidence-based approach embodied in the Settlement Agreement.

[110] Hr. Ex. 401 at 29:3-4.

55. With respect to CEO's concerns regarding the Company's reporting and stakeholder engagement, the ALJ finds that the Settlement Agreement includes robust provisions that reflect meaningful transparency and outreach. These include a required written report by December 10, 2025, and a final comprehensive report at the conclusion of Phase II. The Agreement also commits PSCo to retain a community engagement consultant with multilingual and culturally relevant outreach capabilities. While CEO's recommendations for additional reporting and consultation are well-intentioned, they are not required to ensure effective oversight at this time and could be revisited in future proceedings if needed.

56. Similarly, the undersigned ALJ finds that CEO's recommendations regarding the Ambient Loop are premature and unnecessary at this stage. The Settlement Agreement expressly limits the Company's involvement to a collaborative and informational role, without any approved cost recovery or capital investment. Imposing requirements for cost tracking or detailed analyses at this point would be speculative and inconsistent with the exploratory nature of the Ambient Loop project. If the Company files a future application involving the Ambient Loop, or if the Commission deems it appropriate to assess the Ambient Loop's implications in another proceeding, issues such as cost allocation and rate impacts can be comprehensively addressed with a more fully developed evidentiary record.

57. For the reasons set forth above, the undersigned ALJ finds and concludes that Settlement Agreement is just, reasonable, and that the modifications to the Settlement Agreement sought by CEO could undermine a consensus-based resolution in this Proceeding.

58. Based on the foregoing, the Motion will be granted, and the Application will be granted, as amended by the Settlement Agreement, as ordered below.

V. TRANSMISSION OF THE RECORD

59. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding along with this written Recommended Decision and recommends that the Commission enter the following order.

VI. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Motion to Approve Comprehensive Settlement Agreement and Request for Waiver of Response Time, filed by Public Service Company of Colorado (the "Company") on February 27, 2025, is granted, in part.

2. The Comprehensive Settlement Agreement ("Settlement Agreement") filed by the Company on behalf of the Company, Staff of the Colorado Public Utilities Commission, Utility Consumer Advocate, and the City and County of Denver (the "Settling Parties") on February 27, 2025 is approved. The Settlement Agreement is incorporated herein and attached hereto as Attachment A.

3. The Verified Application filed by the Company on August 29, 2024, as modified by the Settlement Agreement, is granted.

4. Consistent with the discussion above, the Company shall comply with the terms of the Settlement Agreement, including the requirement to file a report in this Proceeding on or before December 10, 2025, consistent with § III, ¶7 of the Settlement Agreement.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

   a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed

by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director