Decision No. C25-0449

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0369EG

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.

COMMISSION DECISION ADDRESSING EXCEPTIONS TO RECOMMENDED DECISION NO. R25-0352

Issued Date: June 11, 2025
Adopted Date: June 11, 2025

TABLE OF CONTENTS

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the exceptions filed by the Colorado Energy Office ("CEO") to Recommended Decision No. R25-0352, issued by the

Administrative Law Judge ("ALJ") on May 6, 2025 ("Recommended Decision"). The Recommended Decision approved a non-unanimous comprehensive Settlement Agreement between Public Service Company of Colorado ("Public Service" or the "Company"), on behalf of itself and Trial Staff of the Commission ("Staff"), the Office of Utility Consumer Advocate ("UCA"), the City and County of Denver ("Denver"), and the Colorado Energy Office ("CEO"), and granted the Company's Application in this Proceeding, as modified by the Settlement Agreement.

2. On May 14, 2025, CEO filed exceptions to the Recommended Decision, pursuant to § 40-6-109(2), C.R.S., in which it 1) argued that the ALJ did not adequately address its concerns about the Company's ability to begin designing replacement projects in a timely manner, should one or both of the proposed pilot communities fail to move forward; 2) disagrees with the ALJ's finding that its recommendations for additional reporting and consultation are not required; and 3) disagrees with the ALJ's finding that responses to several questions it poses regarding regulation of and cost recovery for the Denver Ambient Loop project and the implications that project may have for remaining customers on the Denver Steam System are not necessary at this stage. To alleviate these concerns, CEO recommends that the Commission 1) approve a streamlined process and corresponding budget for Public Service to move forward with backup pilot projects should one or both of the pilot communities proposed in the Settlement Agreement fail; 2) require the Company to provide updates on its Phase II development activities during the demand-side management quarterly stakeholder meetings and to file the meeting slides in e-filings for this proceeding; 3) direct the Company to consult with CEO on community engagement activities; and 4) direct the Company to address the regulatory, cost recovery and steam customer rate questions it raises prior to seeking any cost recovery for the Denver Ambient Loop project.

3. By this Decision, we grant, in part, and deny, in part, the exceptions filed by CEO. We deny CEO's exceptions regarding pre-approval of alternate pilot communities, budgets for detailed Thermal Energy Network ("TEN") design and community outreach for alternate pilot communities, and requirements for additional reporting and consultation with CEO beyond those contained in the Settlement Agreement. We grant CEO's exception regarding a requirement for the Company to address CEO's questions regarding certain regulatory considerations and potential implications of the Denver Ambient Loop project for the Denver Steam System and its ratepayers.

B. Procedural History

4. On August 29, 2024, Public Service filed its Verified Application ("Application") 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 Pilot Initiative (the "TEN Pilot Initiative").

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

6. On September 12, 2024, the Petition for Leave to Intervene of the City and County of Denver was filed by Denver.

7. On September 12, 2024, UCA timely noticed its intervention as a matter of right.

8. On September 30, 2024, CEO timely noticed its intervention as a matter of right.

9. On October 2, 2024, Staff timely noticed its intervention as a matter of right.

10. On October 9, 2024, the Commission referred this matter by minute entry to an ALJ.

11. 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.

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

13. 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]

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

15. On March 14, 2025, an evidentiary hearing in this matter was held as scheduled. All parties appeared 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 admitted into evidence, Mr. Michael Pascucci testified on behalf of the Company, and Mr. Keith Hay testified on behalf of CEO.

[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.

16. On April 3, 2024, Public Service Company of Colorado's Statement of Position ("PSCo's Statement of Position"), Staff's Statement of Position, Post Hearing Statement of Position of the Office of the Utility Consumer Advocate ("UCA's Statement of Position"), and the Statement of Position of the Colorado Energy Office ("CEO's Statement of Position") were filed by the Company, Staff, UCA, and CEO, respectively.

17. The ALJ issued his Recommended Decision No. R25-0352 on May 6, 2025, approving the settlement without modification and shortening response time to any exceptions to six days.

18. CEO filed exceptions to the Recommended Decision on May 14, 2025.

19. Public Service filed a joint response to the CEO exceptions on behalf of itself, Staff, UCA and Denver on May 21, 2025. Included with the joint response was an unopposed Motion for a variance to Recommended Decision No. R25-0352 seeking a one-day extension to the response deadline.[4]

C. Recommended Decision

20. In the Recommended Decision, ALJ Segev noted that CEO supported most of the terms in the settlement. The ALJ found that CEO's desire for backup sites to be pre-approved in this proceeding was not supported by the record, and that the settlement provision that any replacement pilot communities be presented in the Company's July 2026 CHP application would allow the time necessary to reassess TEN feasibility in light of any lessons learned, ensuring a more informed process before proceeding with additional investments. He also found that the $2.55 million budget proposed in the settlement reflected a negotiated amount, and that the

[4] The Commission notes that Decision No. R25-0352 established an expedited response time to exceptions of six days. As CEO filed its exceptions on May 14, 2025, responses were therefore due on May 20, 2025. The parties' joint response was filed one day late on May 21, 2025.

$5.49 million budget advocated by CEO would not be consistent with the phased, evidence-based approach embodied in the Settlement Agreement.

21. The ALJ further found CEO's recommendations for additional reporting and consultation on community outreach to be unnecessary, given the provisions in the settlement requiring an interim and final reports and requiring the Company to hire a multilingual community engagement consultant.

22. Finally, the ALJ found that CEO's recommendations regarding the Denver Ambient Loop are premature and unnecessary at this stage. The ALJ noted that the Settlement Agreement expressly limits the Company's involvement to a collaborative and informational role, without any approved cost recovery or capital investment. The ALJ reasoned that 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, and that the Commission could address cost allocation and rate impacts comprehensively in a future proceeding if the Company were to file an application involving the Denver Ambient Loop.

D. CEO Exceptions and Settling Parties' Responses

23. In its exceptions, CEO states that it disagrees with the Recommended Decision, asserting that the ALJ did not adequately address its concerns about the potential for a project to become untenable or the ability for Public Service to begin designing replacement projects in a timely manner should one of the two chosen projects need to be replaced. CEO expresses concern that without an expeditious path to identify backup communities, emission reductions from TEN pilots could be delayed for years. CEO is supportive of the Company's proposed two-phased approach (first conducting detailed design and community outreach in the first phase and subsequently getting approval and constructing at least one TEN) but is concerned that this

approach has introduced delays to the process established by the General Assembly and opposes any further delays in construction of a TEN project. It notes that three of the top five sites that the Company identified are no longer viable for various reasons and wishes to establish an expedited path to fund development of alternates, should one of the two proposed communities fail to progress.[5]

24. CEO finds fault with both of the processes the Settling Parties have proposed for the identification of alternate communities. CEO contends that the proposed approval of any alternates via the July 2026 CHP filing will delay the pilot too much, as a decision in that proceeding is unlikely prior to sometime in 2027, meaning that implementation would be delayed until 2028. CEO notes that the proceeding will include demand-side management, beneficial electrification and clean heat plan, respectively, , and so could be quite extensive. And with respect to approval of alternates though the House Bill ("HB") 24-1370 process (Proceeding 25D-0183G regarding gas planning communities), CEO states that if such projects lack customer support through that process, the Company need not seek approval of alternates until June of 2027, and that TENs are not required in any case—the Company could propose neighborhood-scale electrification instead.[6]

25. CEO also opposes the Settlement requirement that any alternative project be in the same category as the failed project (either a mountain community or a Disproportionately Impacted Community). CEO sees this as unnecessarily restrictive, suggesting that two campus projects that have already been screened by the Company would be viable replacements. CEO also disagrees with the ALJ's characterization of TENs as "nascent technology," noting that the technology has

[5] CEO's Exceptions to Decision No. R25-0352, pp. 9-11.
[6] *Id.*, pp. 11-12.

been deployed at Colorado Mesa University since 2008 and that it has been used in Europe for over a century.[7]

26. CEO takes issue with the ALJ's finding that "[a]pproving a larger budget at this stage would not be consistent with the phased, evidence-based approach embodied in the Settlement Agreement", suggesting that the additional budget need would not be large, and in any case that a larger budget would be consistent with the reasonable, evidence-based approach that CEO proposed. It notes that the Company would need to account for any unused budget from the initial projects before accessing any additional budget for the backup communities.[8]

27. CEO contends that its proposal for additional budget is a small increment in comparison to the approximately $500 million the Company has spent on gas pipeline safety over the last 10 years and the approximately $150 million it plans to spend on gas infrastructure over the next five years. CEO emphasizes that TENs have the potential to reduce consumer bill costs, reuse existing gas infrastructure, avoid emissions from the gas system and assist Public Service in avoiding stranded gas assets. Moreover, CEO points out that some of the incremental $3 million it is proposing could be provided by the CHP Market Transformation Innovation Fund that Commission approved in Proceeding No. 23A-0392EG.[9]

28. Finally with regard to the budget for the pilots, CEO points out that the Settlement Agreement contains a provision for the Company to revise its budget estimate for the proposed pilot projects by notifying and convening the parties to justify the need for additional budget. Noting that this provision gives parties the right to oppose any increased budget, CEO argues that

[7] *Id.*, pp. 12-14.
[8] *Id.*, p. 15.
[9] *Id.*, pp. 15-18.

because this provision doesn't include a budget cap, it could provide even less protection for ratepayers than CEO's proposal, which has a hard cap.[10]

29. CEO states that it respectfully disagrees with the ALJ's finding that its recommendations for additional reporting "are not required to ensure effective oversight at this time and could be revisited in future proceedings if needed." CEO recommends the Commission direct the Company to provide project updates during the quarterly DSM stakeholder meetings and file the meeting slides in this proceeding, asserting that this will improve transparency throughout the process by helping to inform the parties and the Commission of any progress or roadblocks the Company encounters throughout the design and engagement phase. CEO further asks the Commission to require the Company to consult with CEO on community engagement, given its experience with community engagement and the fact that it is working with the Company on implementation of HB 24-1370. It asserts that coordination with CEO will improve lessons learned and increase consistency among community engagement efforts.[11]

30. With regard to the Denver Ambient Loop project, CEO states that it has questions about how the project will be regulated and paid for, the impact of the project on both gas and steam utility customers, and whether or not the project is replicable. It asks the Commission to order Public Service to work with Denver and track any costs associated with Denver's Ambient Loop project so the Commission can determine cost recovery in a future proceeding. It also asks the Commission to order the Company and Denver to consider the impacts to the remaining steam customers when they collaborate to explore and establish recommendations related to cost estimates, cost allocation, and cost recovery. While it notes the Settlement provisions requiring

[10] *Id.*, p. 18.
[11] *Id.*, pp. 18-20.

this, CEO recommends that the Commission direct the Company to provide information needed for Denver to advance the Ambient Loop Project through other avenues, including a Clean Heat Plan or HB 24-1370 neighborhood-scale alternatives, in case the project is not approved under the Thermal Energy Network Statute.[12]

31. Finally, CEO recommends that the Commission order Public Service to work with Denver to answer the following questions and include the responses as part of any future filing for approval of the project:

- What is the impact of the Ambient Loop pilot project to remaining steam customers? Would any increases in steam rates for remaining customers likely lead them to convert to on-site gas boilers? Can the Ambient Loop pilot be scaled to serve or accommodate all existing steam customers? If so, what is the timeline and cost of scaling the system, and who would pay?
- How will the cost of construction be funded? Would Denver, Public Service gas customers, or Public Service steam customers pay these costs?
- Will the Ambient Loop TEN be a regulated service provided by the gas utility or an unregulated service?
- Is this project a replicable model for transitioning other sections of the gas system to thermal service? Is a gas pilot proceeding the appropriate venue for approving this project? If not, is a Clean Heat Plan or the HB 24-1370 process more appropriate?

32. Contrary to the ALJ's findings, CEO states its belief that answers to its questions are necessary at this stage.[13]

33. In their joint response, the Settling Parties observe that CEO has not attempted to show how or why the ALJ erred in finding that "the Settlement Agreement is just, reasonable, and that the modifications to the Settlement sought by CEO could undermine a consensus-based resolution in this Proceeding." They assert that the Commission should similarly reject CEO's exceptions because "there are no new grounds raised that justify or support a different result."

[12] *Id.*, pp. 20-21.
[13] *Id.*, pp. 21-22.

Moreover, they contend that the "quickly approaching" CHP filing is more than sufficient to address replacement pilot needs for any infeasible pilot approved in this proceeding. The Settling Parties further argue that the ALJ was correct in determining that the additional $3 million budget CEO proposes is not necessary or reasonable on the record of this case.[14]

34. The Settling Parties assert that the ALJ properly found that the Settlement Agreement has robust requirements that resolve reporting and community engagement issues, noting that the Company must file three separate reports, and that the Settlement Agreement contains robust community engagement consultant requirements. They note that CEO raises no new issues in its exceptions that require modification to the Settlement.[15]

35. With regard to the Denver Ambient Loop project, the Settling Parties counter that the ALJ correctly rejected CEO's arguments given that the Company's involvement at this point is only in a collaborative and informational role, with no approved cost recovery. They support the ALJ finding that future applications involving the Ambient Loop project could address more specific requirements regarding that potential project.[16]

E. Discussion, Findings, and Conclusions

36. With regard to CEO's exceptions on the pre-approval of communities and additional funding that the Company could turn to in the event of a failure of one or both of the pilot communities set forth in the Settlement Agreement, we are persuaded by Trial Staff's argument that having passed through the Company's initial screening process to be identified as the highest-ranking targets for pilot communities, if one or both of the communities proposed for

[14] Joint Response of Public Service Company of Colorado, Trial Staff, The Utility Consumer Advocate, and the City and County of Denver to the Colorado Energy Office's Exceptions to Recommended Decision No. R25-0352, pp. 1-3.
[15] *Id.*, p. 3.
[16] *Id.*

the pilot fails at this stage, it will be essential to understand the reasons for this failure before spending additional funds on an alternate community.[17] Further, despite CEO's contention that TENs are nothing new, the reality is that it is not the novelty of the technology itself that matters, but rather its application at the neighborhood level. From the perspective of the homeowners and businesses asked to participate in the pilot, this technology will be completely new and unproven. We agree with Staff that it will therefore be crucial to learn from unsuccessful efforts in either community to avoid wasteful spending that might have similar results elsewhere. We therefore uphold the Recommended Decision and its endorsement of Settlement provisions regarding alternate communities and budget.

37. CEO asks that we impose additional reporting and consultation requirements on the Company. While CEO's requests for additional reporting are not unreasonable, we find that CEO has not demonstrated that its needs for additional information rise to the level of requiring that an otherwise reasonable Settlement Agreement be rejected. CEO is already working with the Company to implement the provisions of Senate Bill ("SB") 24-1570, which suggests that the two entities will be exchanging information on a frequent basis that is, at the very least, closely related to the subject matter of this proceeding. We believe that if it finds anything amiss in the Company's formal reporting on the pilot (i.e., that required by the Settlement Agreement) or in the process of its related SB 24-1570 interactions with the Company, CEO has procedural options both within and outside the confines of this proceeding to make the Commission aware of its concerns. Again, we see no reason to upset the Settlement Agreement on the basis of CEO's concerns here.

38. Finally, CEO is correct that the Denver Ambient Loop project, should it move forward to construction and operation, raises important questions about cost recovery and about

[17] Hearing Exhibit 201, Settlement Testimony of Patrick C. LaMere, pp. 12-13.

implications for the existing steam system and its customers. At this point, the Ambient Loop Project is at an early stage of investigation, and the Company states that it is not spending any funds that ratepayers will be asked to repay. If that is the case, any Commission directive now to track such costs would be meaningless. Moreover, the Settlement Agreement explicitly states that it does not approve any cost recovery associated with the commencement of Phase II development work for the project.

39. Nevertheless, the questions CEO raises regarding the Ambient Loop project are important ones. Accordingly, we will grant the CEO exception in this case and require the Company to provide responses to the questions listed in Paragraph 31, either as a component of any application filing relevant to the Denver Ambient Loop project that it may make in the future, or in the event that the Denver Ambient Loop project moves forward without such application, as an informational filing in this Proceeding. If responses to these questions are ultimately filed in this Proceeding, they shall be filed no later than 120 days following the date on which a decision is made to move forward with construction of the Denver Ambient Loop project.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R25-0352 filed on May 14, 2025, by the Colorado Energy Office ("CEO") are granted, in part, and denied, in part.

2. Recommended Decision No. R25-0352 is adopted and modified by this Decision, consistent with the discussion above.

3. If at a future time Public Service Company of Colorado (the "Company") files an Application for approval of the Denver Ambient Loop project, it shall include in its application responses to the questions CEO has proposed, as documented in Paragraph 31 of this Decision. If,

in conjunction with the City and County of Denver, the Company decides to move forward with construction of that project in a manner that does not require an application, it shall provide responses to these questions in a filing submitted in this Proceeding no more than 120 days following such decision.

4. The 20-day period provided for in § 40-6-114, C.R.S., within which to file an Application for Rehearing, Reargument, or Reconsideration, begins on the first day following the effective date of this Decision.

5. This Decision is effective immediately upon its Issued Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING JUNE 11, 2025.

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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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ATTEST: A TRUE COPY

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Commissioners

Rebecca E. White,
Director