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DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock Street, Room 256 Denver, Colorado 80202	
INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION d/b/a CORE ELECTRIC COOPERATIVE, Plaintiff, v. PUBLIC SERVICE COMPANY OF COLORADO, Defendant.	▲ COURT USE ONLY ▲
Attorneys for Plaintiff Intermountain Rural Electric Association d/b/a Core Electric Cooperative: Perry L. Glantz, Atty. Reg. No. 16869 Ryan M. Sugden, Atty. Reg. No. 49499 **STINSON LLP** 1144 Fifteenth Street, Suite 2400 Denver, CO 80202 Phone: 303-376-8410 Fax No: 303-376-8439 perry.glantz@stinson.com ryan.sugden@stinson.com	Case No.: Div. No.:
COMPLAINT AND JURY DEMAND	

Plaintiff Intermountain Rural Electric Association, d/b/a CORE Electric Cooperative ("CORE"), for its Complaint against Defendant Public Service Company of Colorado ("PSCo"), states and alleges as follows:

INTRODUCTION

1. CORE is a Colorado electric cooperative that provides retail electric service to customers from the Eastern Plains to the Colorado Front Range, including the towns of Elizabeth, Bennett, Castle Rock, Parker, Larkspur and Woodland Park. In order to serve its customers, CORE owns a [redacted] share of the Comanche Unit 3 electric

generation facility near Pueblo, Colorado ("Comanche 3"). The majority owner of Comanche 3 is Public Service Company of Colorado ("PSCo"), which owns a [redacted] interest. Holy Cross Electric Association ("Holy Cross") owns the remaining [redacted]

2. Comanche 3 was proposed to be a state-of-the-art, 750-megawatt super-critical electric generating facility and commenced commercial operation in 2010. It was projected to have a useful lifespan of at least 60 years. PSCo is the sole operator of Comanche 3 and is contractually obligated to operate and maintain Comanche 3 consistent with Prudent Utility Practices and to deliver to CORE and Holy Cross their percentage share of the electric output of Comanche 3.

3. This case arises from PSCo's failure to operate Comanche 3 in accordance with its contractual obligations and Prudent Utility Practices. Because of PSCo's failure to operate Comanche 3 in a manner consistent with Prudent Utility Practices, the facility has been plagued with outages and is out of service, on average, more than 91 days per year – the worst reliability record of any of PSCo's generation facilities. Most recently, Comanche 3 was out of service from January 2020 to January 2021 largely due to a failure of its steam turbine, which suffered damage because of years of neglect and the subsequent destruction of its bearings when a PSCo employee shut off the lubrication oil feed when the turbine was spinning at high speed.

4. Because of PSCo's failure to operate Comanche 3 in accordance with Prudent Utility Practices, CORE has incurred millions of dollars of additional repair and maintenance costs and has spent millions more to purchase replacement power during the numerous, lengthy outages of the unit. Further, the permanent damage to Comanche 3 that has resulted from PSCo's breaches of contract will cause excessive repair and maintenance costs and unplanned outages resulting in costs for replacement power to continue in the future. This will ultimately result in the plant being retired from service prematurely. The early retirement will force CORE to secure replacement power at a higher cost resulting in additional recoverable damages. In addition, Comanche 3 has suffered a permanent diminution in value because of PSCo's ongoing failures of operation and maintenance. This is a direct loss of CORE's benefit of the bargain with PSCo at Comanche 3. CORE now seeks to recover the damages that are a direct result of PSCo's failure to operate Comanche 3 in accordance with its contractual obligations and Prudent Utility Practices.

PARTIES, JURISDICTION, VENUE

5. CORE is a Colorado non-profit corporation and cooperative electric association, with its principal office at 5496 N. U.S. Highway 85, Sedalia, Colorado 80135.

6. PSCo is a Colorado corporation with a principal office address of 1800 Larimer Street, Suite 1100, Denver, Colorado 80202. PSCo is an investor-owned, for-profit corporation doing business as Xcel Energy.

7. This Court has subject matter jurisdiction over this Complaint pursuant to Colorado Constitution article VI, Section 9 because CORE asserts claims for breach of contract and other

claims within this court's general subject matter jurisdiction and CORE seeks legal and equitable remedies for PSCo's breaches of contract and other wrongful conduct.

8. Venue is proper in this Court pursuant to C.R.C.P. 98(c) because PSCo's principal office is located in the City and County of Denver.

FACTS

I. The Development and Operation Agreements for Comanche 3 Invest PSCo with Operational Responsibility

9. PSCo and CORE were parties to a Restated and Amended Power Purchase Agreement dated January 1, 2004, which granted CORE the option to participate as an owner in any power generation construction project undertaken by PSCo in Colorado that would be used by PSCo to supply wholesale power.

10. As a means to provide a reliable, cost-effective supply of energy for its members, CORE exercised its option under the Restated and Amended Power Purchase Agreement to purchase an undivided ownership in Comanche 3. On April 8, 2005, CORE entered into a series of agreements with PSCo for the ownership, construction, maintenance and operation of that facility, including: (i) a Joint Ownership Agreement ("Original JOA"); (ii) an Operations and Maintenance Agreement (the "Original O&M Agreement"); (iii) a Common Facilities Agreement (the "Original Common Facilities Agreement"); and (iv) a Property Rights Agreement (the "Original Property Rights Agreement") (collectively referred to herein as the "Project Agreements" as amended).

11. PSCo and CORE subsequently amended the Original JOA Agreement and Original O&M Agreement to add Holy Cross as a party to the agreements. PSCo, CORE and Holy Cross have entered into a Second Amended and Restated Joint Ownership Agreement (the "JOA") and a Second Amended and Restated Operations and Maintenance Agreement (the "O&M Agreement"), which are the operative agreements for the purpose of this action. JOA attached hereto as Exhibit A and O&M Agreement attached hereto as Exhibit B.

12. Under the JOA, [redacted]

13. [redacted]
Exhibit A at p. 5.

14. [redacted] xhibit A at § 5.1.1.

15. [redacted] Exhibit A at p.10. CORE paid its share of these expenses in full in satisfaction of its obligations under the JOA.

16. [redacted] Exhibit B at § 3.1. CORE has paid its share of these costs in satisfaction of its obligations under the O&M Agreement.

17. [redacted] Exhibit A at Schedule 6, § 1.1(b) (definitions).

18. The availability of the power generated at Comanche 3 was CORE's benefit of the bargain under the Project Agreements.

19. When PSCo entered into the Project Agreements with CORE for the development of Comanche 3, the parties contemplated that CORE would purchase replacement power to meet its members' demand in the event Comanche 3 was unavailable. Concurrently with the execution of the Project Agreements, CORE and PSCo entered into a Second Restated and Amended Power Purchase Agreement which included a Rate Schedule B, pursuant to which CORE was required to purchase "backup" power from PSCo "when energy is unavailable from Comanche 3 due to maintenance outages (scheduled or unscheduled), forced outages, unit derates, the failure of facilities interconnecting Comanche 3 with the Public Service transmission system, or similar events." Second Restated and Amended Power Purchase Agreement, April 8, 2005, Rate Schedule

B attached hereto as Exhibit C.

20. Accordingly, PSCo knew and could reasonably foresee that if it did not deliver the anticipated power and energy output from Comanche 3, CORE would be required to purchase replacement power and energy from PSCo to make up for Comanche 3's deficit. Indeed, PSCo stood to benefit from CORE's purchase of replacement power when the cost of replacement power purchased from PSCo exceeded the cost of CORE's share of the output from Comanche 3.

II. PSCo Has a Contractual Obligation to Operate and Maintain Comanche 3 in Accordance with "Prudent Utility Practice."

21. [redacted] Exhibit B at § 2.1.2. [redacted] Exhibit B at § 2.1.

22. "Prudent Utility Practice" is defined in the O&M Agreement as follows:

[redacted]

See Exhibit B at Article 1 (definitions). Each of the Project Agreements include this definition of "Prudent Utility Practice" in stating the applicable standard of care.

23. PSCo is obligated to operate Comanche 3 such that CORE receives the power to which it is entitled pursuant to the JOA. [redacted]

[redacted]

[redacted]

24. The O&M Agreement imposed a series of specific duties on PSCo governing its operation of Comanche 3, including (but not limited to):

[redacted]

25. Under the JOA [redacted]

See Exhibit A at § 3.1(b).

26. [redacted]

III. PSCo has Breached its Obligation to Operate and Maintain Comanche 3 Consistent with Prudent Utility Practices.

A. PSCo's Inadequate Operation and Maintenance Practices Have Deprived CORE of the Benefit of its Investment in Comanche 3.

27. Comanche 3 burns coal to heat water and make steam, which spins a turbine that, in turn, spins a generator to make electricity. Comanche 3 is a "supercritical" steam generator, which means that it operates above critical pressure, which allows Comanche 3 to convert steam to mechanical energy more efficiently. The operator of a steam-powered facility must maintain proper "water chemistry" to avoid damage to the unit–that is, the water used to make steam and drive the turbine must be kept free of impurities, such as salts and dissolved solids, which under the high-pressure environment can cause the components of the plant to degrade and, if left untreated, fail. Degradation and failure is precisely what has happened at Comanche 3.

28. On October 30, 2020, the PUC opened an investigatory proceeding into operational issues at Comanche 3. Attached hereto as Exhibit D. The PUC issued a report on March 1, 2021 concluding that the reliability issues were likely a result of poor equipment selected by PSCo as well as "substandard" operation and maintenance practices. *See* March 1, 2021, Staff Report in the Matter of the Investigation into the History and Continuing Operations of the Public Service Company of Colorado Comanche Unit 3 Generating Station Pursuant to Decision No. C20-0505, PUC Docket No. 20I-0437E, at p. 43 (the "PUC Staff Report") attached hereto as Exhibit E. Among other things, the PUC sought to understand "why is Comanche 3, a unit still in its first decade of its 60-year useful service life, plagued with such poor unit reliability?" *Id.*

29. As reflected in the PUC Staff Report, Comanche 3 has suffered an average of 91.5 outage days per year from the date it was commissioned, meaning that, in any given year, Comanche 3 was not operational for three entire months, a statistic the report accurately labels a "very troubling metric." Exhibit E at p. 65. Only 27% of these outage days were planned. The remainder were unplanned or non-routine outages that are largely the result of PSCo's imprudent operation and maintenance of Comanche 3.

30. Between 2010 and 2020, many of Comanche 3's unplanned outages were caused by boiler tube leaks and equipment replacements, which in turn were caused by PSCo's imprudent utility practices and failure to maintain proper water chemistry. Indeed, one significant equipment replacement that occurred just five years after Comanche 3 was commissioned—replacing the finishing superheater, which required a 75-day unplanned outage and millions in repair costs—was "quite possibl[y]" caused by PSCo's "improper cycle chemistry." Exhibit E at p. 46. Because

of PSCo's inability to prudently maintain and operate Comanche 3, the plant "had the lowest availability during the period from 2010 through October 2020" among PSCo's other coal and natural gas thermal generating units. Exhibit E at p. 67. Using an electric utility industry metric, the Equivalent Availability Factor ("EAF"), the PUC concluded that:

> … when compared to other PSCo-owned coal and gas-fueled units that operate on either a single steam cycle or a combined cycle, Comanche 3 had the lowest weighted average EAF from 2010 through October 2020. Although newer units should be expected to have higher AFs and EAFs compared to older units, the opposite is true for Comanche 3; the Company's older units have a greater weighted average EAF . . . .

Exhibit E at p. 68.

31. Comanche 3 even had a lower EAF than the other two coal-fired units PSCo operates at the same complex, despite those units being built in the mid-1970s. Exhibit E at p. 69.

32. In the Certificate of Public Convenience and Necessity for Comanche 3, PSCo represented that Comanche 3 would operate at an EAF of 95. Instead, according to the PUC, for the first ten years of operation Comanche 3 has operated at a weighted average EAF of approximately 71. Exhibit E at p. 68.

33. Had Comanche 3 been operated consistent with Prudent Utility Practices, its EAF would have been much higher and CORE would have received additional power because of its ownership of Comanche 3.

B. In 2020, PSCo's Imprudent Management of Comanche 3's Water Chemistry and Failure to Follow Industry Standard Maintenance and Operation Practices Caused One of Comanche 3's Turbines to Suffer Significant Damage.

34. Comanche 3 utilizes a Mitsubishi TCRF36, N-61 steam turbine generator set, which comprises three large rotors coupled together. It includes a combined nine-stage high pressure ("HP") turbine, a six-stage intermediate pressure ("IP") turbine, and two six-stage, dual flow low pressure ("LP") turbines.

35. On January 13, 2020, Comanche 3 tripped offline when two blades in one of the LP turbines broke off while the turbine was spinning at high speed, causing considerable damage to the unit (the "L-1 Blade Failure"). This failure was caused by PSCo's deficient maintenance and operating procedures and practices.

36. Following the January 13, 2020 event, PSCo retained an experienced engineering firm, Structural Integrity Associates, Inc. ("Structural Integrity"), to determine the root cause of the L-1 Blade Failure. Exhibit E at p. 18. The Structural Integrity report is attached hereto as Exhibit F.

37. [redacted] xhibit F at p.3. [redacted]

38. [redacted]

[redacted]

Exhibit F at p.48.

39. [redacted] Exhibit F at p.48.

40. [redacted]

[redacted]

Exhibit F at p.48.

41. [redacted]

[redacted] Exhibit F at p.6.

42. [redacted] Exhibit F at p.3.

43. [redacted] Exhibit F at p.21.

44. [redacted] Exhibit F at p.12.

C. PSCo's Investigation into the L-1 Blade Failure Reveals Other Damage Caused by PSCo's Imprudent Utility Practices.

45. During the investigation of the L-1 Blade Failure, it was discovered that additional damage had been done to the HP turbine blades from water intrusion events in 2018. A full train analysis of the turbine conducted on or about January 24, 2020 revealed rubbing on the rotating blades of stages 2 through 9 of the HP turbine, with hardening of the shrouds from heating on stages 7-9. Again, this damage was caused by PSCo's deficient maintenance and operating procedures and practices.

46. In a report prepared by a member of PSCo's Fleet Engineering group (hereinafter, the "Hunt Report"), [redacted]

[redacted]

47. PSCo hired General Electric ("GE") to analyze and repair the damage identified in the Hunt Report. [redacted]

[redacted]

48. GE concluded that [redacted] The GE Report is attached hereto as Exhibit H.

D. From January to June 2020, the L-1 Blade Failure's Unplanned Outage Stretched 141 Days, Depriving CORE the Benefit of its Bargain Under the Project Agreements.

49. In total, on account of the January 13, 2020 LP blade failure and the HP damage caused by PSCo's failure to operate consistent with Prudent Utility Practice, Comanche 3 was offline for 141 days and millions of dollars were spent to repair the blades and other damage. Just like the hundreds of days of unplanned outages in the years before, this unplanned outage deprived CORE the benefit of its bargain under the Project Agreements and directly caused CORE to suffer monetary damages.

50. Even while CORE was suffering these damages, PSCo appeared to be looking out for its own best interests. [redacted] CORE is required to pay its Total Facility Percentage Share of the costs of such insurance and any deductibles.

51. CORE alleges, on information and belief, that PSCo failed to pursue an insurance claim to cover costs associated with the January 2020 blade failure to avoid disclosing that the damage was caused by PSCo's imprudent utility practices. PSCo's self-interested decision damaged CORE because it caused CORE to have to pay O&M expenses that should have been covered by insurance. On information and belief, CORE believes this was a practice that occurred throughout the operating life of Comanche 3 resulting in unnecessary costs being paid by CORE.

E. In June 2020, When PSCo Tried to Restart Comanche 3 After the L-1 Blade Failure Repairs, PSCo Caused Another Unplanned Outage and More Damage to Comanche 3 by Shutting Off All Lubrication to the Turbines While They

Were Spinning at High Speed.

52. After the damage from the L-1 Blade Failure and the HP damage were repaired, PSCo attempted to restart Comanche 3. During the startup, PSCo caused more damage to Comanche 3 because it again failed to operate Comanche 3 consistent with Prudent Utility Practice (as described below). This caused Comanche 3's ongoing unplanned outage to continue for an additional 231 days.

53. Properly lubricating Comanche 3's turbine is critical to its operation and is required under Prudent Utility Practices. The Comanche 3 turbine lubrication oil ("TLO") system has two oil coolers. Typically, only one cooler is used, and simultaneous use of the oil coolers is not advised. Oil flow in-and-out of the coolers (*i.e.* into and out of the turbine and generator) is controlled by a six-way valve system, which is essentially two three-way valves connected by a shaft so that each of the three-way valves operates in unison with the other. The TLO valve was manually controlled by a wheel.

54. While PSCo was attempting to restart Comanche 3 on June 2, 2020, a PSCo employee manually turned the TLO valve, closing it and shutting off all oil supply to the turbine. This resulted in metal-on-metal contact, overheating, and severe damage to the bearings, blades, shaft, and generator. Exhibit E at p.22.

55. PSCo was in the process of start-up activities for Comanche 3 when a TLO alarm was triggered. Exhibit E at p.22. A team of PSCo employees investigated the alarm, after which PSCo's Senior Operations Manager directed a Plant Specialist Apprentice ("PSA") to turn the six-way valve to open the West cooler. *Id.* The temperature was reduced, and PSCo resumed start-up operations. *Id.; see also* PSCo Root Cause Report attached hereto as Exhibit I.

56. PSCo's internal report noted that, shortly thereafter, a different PSCo apprentice ("PSA1") heard radio communications regarding the team's actions, although he was unable to hear the radio communications clearly due to the loud noise caused by the turbine and his reported hearing loss. PSA1 discussed the TLO valve's configuration with at least one other PSA in a conference room, and "not satisfied with the information" he was provided, went to the TLO valve to investigate. Exhibit E at p.22; *see also* Exhibit I.

57. [redacted] Exhibit I. Nevertheless, PSA1 determined, apparently by touching it with his hand, that the pipe that transmitted oil felt cooler than it should have, and he reconfigured the six-way valve, shutting off oil flow entirely rather than changing it to a single-cooler setting. Exhibit E at p.23.

58. Without lubrication, metal-on-metal contact occurred between various components of Comanche 3's rotor train. According to the PUC Staff Report, "[o]bservers noted sparks coming from some of the turbine bearings and a flash fireball was seen coming from the top of the TLO tank." Exhibit E at p.24.

59. After the June lubrication system failure, PSCo conceded that the markings on the six-way valve were unclear. According to the PUC Staff Report, the valve had two arrows, written in Sharpie, indicating the direction the valve should be turned to control the flow of oil. Exhibit E at p. 29. These markings were not made by the original equipment manufacturer, but rather by PSCo, and were wholly insufficient and an imprudent utility practice for controlling the TLO.

60. In its internal root cause analysis, PSCo noted that a stop pin intended to prevent the six-way valve from traveling to a complete "shut off" position had been sheared off. Exhibit E at p.27-28. However, the stop pin did not cause the lubrication oil to be shut off; it was the action of PSCo's apprentice, PSA1, who manipulated the six-way valve without instruction from any supervisor. Moreover, PSCo cannot discount the fact that the pin may have been sheared when PSA1 manipulated the six-way valve.

61. In addition to its internal root cause analysis, PSCo prepared an internal Human Performance Team Analysis regarding the lubrication system failure. Attached hereto as Exhibit J. [redacted]

62. There was no operating procedure in place to check the system configuration (valve line-up) of the lubrication oil system six-way valve prior to the steam turbine generator start-up.

63. There was no operating procedure in place to check the configuration of the closed cycle cooling water valves (valve line-up) prior to steam turbine generator start-up.

64. Neither the lube oil filters or the lube oil coolers were properly vented using the equalizing valves, nor was the oil flow verified using the sight glasses installed on the TLO system, before PSA1 made the decision to manipulate the six-way valve. Venting of the lube oil coolers and the lube filters is required in the operation manual prior to switching between these devices.

65. The start-up logs for Comanche 3 from June 1 and 2, 2020 indicate that the steam turbine generator was tripped no fewer than *six times* due to low lube oil pressure during the three start-up attempts. The unit tripped a seventh time on June 2, 2020 at the start of the final loss of lubrication event. This number of lubrication oil trips without a thorough investigation of the root cause is inconsistent with Prudent Utility Practice.

66. Further, the PSCo Human Performance Team Analysis noted that the [redacted]

Exhibit J at p.14-15.

67. The resulting damage to Comanche 3 from the TLO event was extensive, with repair costs exceeding $30 million by PSCo's own estimates.

68. Largely due to the TLO event, Comanche 3 was offline until January 2021.

F. The PUC Investigated Comanche 3's History of Outages and Determined that PSCo's Operation and Maintenance Practices Were "substandard."

69. The PUC Staff Report reviewed Structural Integrity's findings concerning the L-1 Blade Failure and water chemistry issues identified in its aftermath and concluded that "Comanche 3's cycle chemistry during the first ten years of operation has not met the standards expected for a supercritical unit." Exhibit E at p. 44. The PUC Staff Report found that PSCo relied on outdated standards, including the "Steam Purity Recommendation or Comanche Guidelines PSCo uses to operate Comanche 3" which "were considered outdated by 20 years in 2020." *Id.* at p. 45. Comanche 3's instrumentation was poorly calibrated and maintained. "The instruments have not provided the required accuracy for the operations to realize serious contamination alarms limits, and shutdown conditions are ignored." *Id.*

70. The PUC Staff Report also condemned PSCo's cycle chemistry management. It found:

> Comanche 3 operations during the first 10-years allowed Operators to ignore alarms and shut down situations, not using optimum chemistry treatment, ineffective monitoring of total iron as the key indicator of chemistry and unreliable chemistry instrumentation.
>
> Further, there has been lack of any chemistry controls to provide steam turbine protection during shutdown. The SIA [Structural Integrity] report identified numerous inadequate or unprotected shutdown events extending 446 days between 2012 and 2019 that could contribute to steam turbine damage through outside moist air leakage into turbine during outages exceeding three days. Moist air leakage into

the turbine, or hygroscopic adsorption into turbine, can lead to pitting, a precursor to corrosion.

Exhibit E at pp. 45-46.

71. The PUC Staff Report agreed with Structural Integrity finding that PSCo needed to substantially improve its O&M practices and procedures and agreed with Structural Integrity's lengthy list of recommendations. *Id.* at pp. 46-47.

72. The PUC Staff Report identified numerous other deficiencies in PSCo's operation and maintenance procedures and its response to the TLO incident. The PUC Staff Report faulted PSCo for:

a. Inadequate Adherence to the Company's Quality Control Policy;
b. Lack of Appropriate Subject Matter Experts on the Team;
c. Inadequate "Extent of Conditions" Analysis of Single Point Vulnerabilities;
d. Modifications Not Correct and Accessible to Other Personnel;
e. Poor Maintenance Practices Contribute to Lower Plant Reliability;
f. Inconsistent Training Practices and Incomplete Documentation of Mastery of Knowledge; and
g. Not adopting all the recommendations its own internal review teams made.

Exhibit E at pp. 35-42.

73. Concerning the TLO event, the PUC Staff Report found that PSCo had not conducted a Single Point of Failure ("SPOF") analysis to identify potential risks posed by design or system defects *before* they manifest into problems or system failures. As the PUC Staff Report found, had PSCo performed a SPOF analysis "the millions of dollars in turbine damage may have been prevented." *Id.* at p. 39. In more than a decade since Comanche 3 was placed into service, PSCo has never performed a SPOF analysis for Comanche 3 or "any of the processes that support" Comanche 3, even though SPOF analyses are "not new to the power industry." *Id*.

74. The PUC Staff Report identified at least two "specific occurrences" of "poor or inadequate maintenance" of Comanche 3 by PSCo that "could ultimately result in reduced reliability of the power plant." *Id.* at p. 40. PSCo admitted it had ***never*** dismantled and inspected the TLO six-way transfer valve since Comanche 3 was placed into service in 2010. In addition, the TLO system filters had not been changed for "several years." *Id*. The manufacturer recommends that the filters be changed when the differential pressure across the filter element reaches 15 psi or every six months, whichever comes first. *Id*., pp. 40-41. The PUC Staff Report expressed "concern" that these specific maintenance lapses could indicate "a lack of adequate maintenance practices in the plant as a whole." *Id*. at p. 41.

75. The PUC found that PSCo has a deficient operator training program. For the PSA responsible for manipulating the TLO valve that caused the lube oil failure, PSCo was unable to produce a signed copy of the training activities showing he completed the required training. *Id.* at

p. 41. Instead, PSCo presented the PUC with a blank copy of an On the Job Training guide given to employees; yet, the guide had general references that PSCo itself admitted were incomplete or needed to be updated. *Id.*

76. The PUC found that PSCo had no procedure for how the TLO valve should be aligned at startup. PSCo's Human Performance Team admitted as much, noting that existing written procedures had "no direction in procedure for desired valve lineup prior to start-up of turbine," which the Sr. Operations Manager acknowledged "was not adequate." *Id.* at p. 42. Despite this acknowledgment, PSCo's Configuration Management Improvement Team did ***not*** revise the written TLO procedure even after the TLO incident occurred.

77. The PUC Staff Report noted that PSCo "has a responsibility to prudently manage Comanche 3 using industry best practices" but the reviews performed by PSCo and outside experts "suggest otherwise." *Id.* at p. 43. GE, which the PUC recognized as "one of the top industry experts on the design, installation, operation and maintenance of electric turbine generators," found "deficient maintenance practices, questionable operating procedures and poor steam quality . . . throughout the machine." *Id.* Structural Integrity similarly identified "inadequate O&M practices at Comanche 3," according to the PUC Staff Report. *Id.*

78. This was not the first time PSCo personnel had incorrectly operated a TLO valve. [redacted]

Id. at pp. 17-18 (emphasis added).

79. [redacted] but the evidence suggests that TLO filters were not replaced for approximately three years before the TLO valve incident, which seriously breaches Prudent Utility Practices and manufacturer recommendations for Comanche 3.

80. The PUC Staff Report concluded that PSCo's "reduced attention to O&M activities ***likely contributed*** to the recent Comanche 3 extended outages." *Id.* at p. 44 (emphasis added).

81. As the PUC Staff Report stated, the TLO valve incident also negated all power train clearance and steam path alignment measures GE completed during the 141-day shutdown from the L-1 blade failure and HP damage.

G. Summary of Comanche 3's History of Unreliability Caused by PSCo's Imprudent Utility Practices.

82. The PUC Staff Report included a chart of Comanche 3's planned and unplanned outages since 2010, with planned in blue and unplanned in red. This chart illustrates the number and length of unplanned outages that PSCo's imprudent utility practices caused.

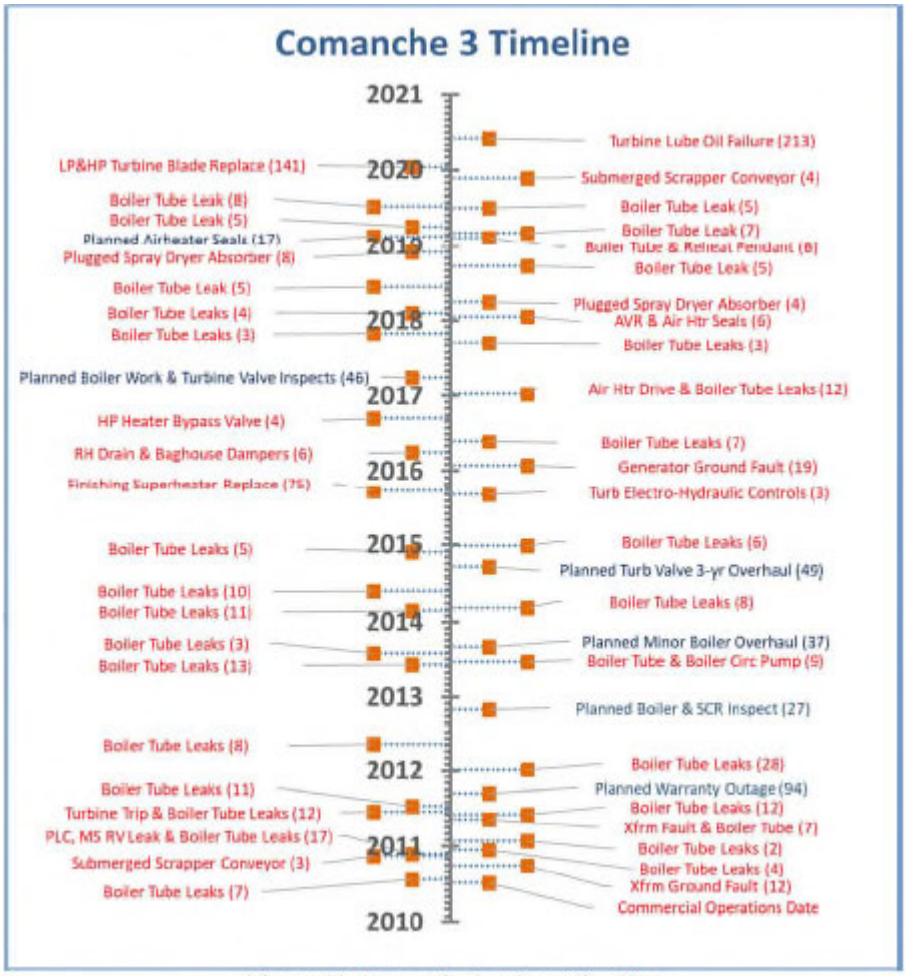

Figure 21. Comanche 3 outages timeline.

H. CORE Incurred Tens of Millions of Dollars in Losses as a Direct Result of PSCo's Breaches of its Contractual Obligations.

83. Because of the numerous and lengthy outages at Comanche 3 since it began commercial operation, CORE has suffered millions of dollars in damages.

84. First, CORE has spent millions of dollars in additional repair and maintenance costs that were incurred only because of PSCo's imprudent utility practices and other breaches of the Project Agreements.

85. Second, CORE has paid to obtain replacement power to cover the energy that Comanche 3 did not produce and PSCo failed to deliver. Indeed, because CORE's Power Purchase Agreement with PSCo requires CORE to purchase "backup power" from PSCo when Comanche 3 is unavailable, PSCo ***benefitted*** from breaching its contracts with CORE and failing to properly maintain and operate Comanche 3 because CORE bought additional wholesale electrical power from PSCo that was ***more expensive*** than its expected output from Comanche 3. While Comanche 3 was unavailable in 2020 and early 2021 due to PSCo's imprudent utility practices, CORE purchased more than $38.5 million in replacement power, which resulted in a net additional cost to CORE of more than $20 million.

86. Third, the accumulated impact of PSCo's failure to operate Comanche 3 consistent with Prudent Utility Practice will result in excessive future maintenance and repair costs and the necessity of CORE continuing to purchase replacement power as a result of unplanned outages for the remaining life of the plant.

87. Fourth, PSCo has greatly devalued CORE's ownership interest in Comanche 3. Due in large part to PSCo's failure to follow Prudent Utility Practices, the expected total useful life of Comanche 3 is now less than half of the original projection of 60 years. Prior to Comanche 3's construction, PSCo had projected it would have a useful life of 60 years of coal fired power production. The reasonable expectation was that the Comanche 3 would be the last coal fired power plant in Colorado as the transition to renewable sources of power was completed. It is now almost certain that Comanche 3 will not operate for more than 20 years. This has resulted in CORE's ownership interest suffering a severe and permanent loss of value. The appraised value of CORE's ownership interest in Comanche 3 is much lower now than it would have been if Comanche 3 had been properly operated.

88. The facts underlying CORE's claims against PSCo and CORE's damages only recently came to light because PSCo intentionally withheld information from CORE.

89. Pursuant to the JOA, an "E&O Committee" was formed, with PSCo, CORE and Holy Cross each appointing one member to the committee. The function of the E&O Committee is, among other things, to discuss events concerning the operation and maintenance of Comanche 3. PSCo, as the Operator and the party in sole possession of all documents and information pertaining to the operation of Comanche 3, is contractually obligated under the JOA and the O&M Agreement to make documents and other pertinent information available to the non-PSCo members of the E&O Committee.

90. During the first ten years of commercial operation at Comanche 3, PSCo withheld and failed to disclose pertinent information to the E&O Committee concerning the nature and causes of the numerous outages that occurred, including information regarding the water chemistry issues and operating procedures employed by PSCo at the plant. PSCo failed to advise the E&O Committee of the numerous failures and the causes of outages that occurred throughout the life of Comanche 3. The true nature and extent of PSCo's failure to follow Prudent Utility Practices was not made known until after the January 2020 steam turbine failure.

91. Upon learning of the nature of PSCo's imprudent utility practices and other breaches, CORE sought to remedy its claims with PSCo. Pursuant to the dispute resolution provisions of the JOA and the O&M Agreement, CORE prepared and submitted a claim to the Coordinating Committee for the losses it incurred because of PSCo's breaches.

92. CORE's sent its initial Notice of Claim signed by Patrick B. Mooney, CORE's Chief Executive Officer at that time and also signed by the President and Chief Executive Officer of Holy Cross Bryan J. Hannegan, to Alice K. Jackson, President of Xcel Energy – Colorado on February 2, 2021. Exhibit K. Two members of the Coordinating Committee signed the initial Notice of Claim and forwarded it to the third member of the Coordinating Committee in satisfaction of Article 18.1 of the JOA.

93. Further, the initial Notice of Claim contained [redacted] in satisfaction of Article 18.2 of the JOA.

94. The members of the Coordinating Committee met and discussed the initial Notice of Claim and were unable to reach a resolution. Moreover, the Chief Executive Officer of CORE and the President of Xcel Energy – Colorado have discussed the Dispute on multiple occasions.

95. CORE sent a second Notice of Claim to the President of Xcel Energy – Colorado on May 21, 2021. Exhibit L.

96. This second Notice of Claim contained a [redacted] in further satisfaction of Article 18.2 of the JOA.

97. The Coordinating Committee was unable to reach a resolution of the claim, and CORE is now entitled to pursue its rights and remedies in this action.

COUNT I
Breach of Contract

98. CORE incorporates all previous allegations as if fully alleged herein.

99. CORE and PSCo have entered into valid and enforceable agreements concerning the ownership, maintenance, and operation of Comanche 3, including the JOA and the O&M Agreement.

100. PSCo breached these agreements by failing to maintain and operate Comanche 3 consistent with Prudent Utility Practices and its specific O&M obligations over the entire life of the unit by, without limitation:

a. failing to follow prudent chemistry shutdown practices using dehumidified air for the steam turbine,

b. ignoring alarm and shutdown limits and maintaining operation during contamination events,
c. not using appropriate chemistry treatments,
d. using unreliable chemistry instrumentation,
e. failing to properly supervise and train personnel,
f. failing to perform proper maintenance or make all necessary repairs and replacements of equipment,
g. failing to have and update appropriate Operating Manuals and training materials,
h. failing to procure equipment and machinery necessary for the performance of the O&M Services,
i. failing to observe operating parameters,
j. failing to implement proper information systems, and
k. failing to properly maintain actuated turbine drain valves and to address the resulting distortion of the casing and rotor at Comanche 3.

101. PSCo's breaches of its contractual obligation to operate consistent with Prudent Utility Practices resulted in an EAF below the reasonable expectations of the parties to the Project Agreements.

102. PSCo's management and operation of Comanche 3 fell below the standard of care reflected in the Project Agreements.

103. PSCo's breaches caused significant damage to Comanche 3, including without limitation the L-1 Blade Failure, the June 2, 2020 Lubrication System Failure, boiler tube leaks, and numerous other unplanned outages that caused Comanche 3 to be unavailable to generate and deliver electrical power to CORE, depriving CORE of the benefit of its bargain and causing Comanche 3 to purchase replacement power from PSCo at a higher cost.

104. PSCo's breaches resulted in increased O&M Costs and Capital Costs charged to and paid by CORE and have permanently reduced the value of Comanche 3.

105. PSCo's breaches caused permanent damage to Comanche 3 that will directly result in Comanche 3 being retired from service earlier than it would have been had PSCo operated Comanche 3 consistent with its contractual obligations and Prudent Utility Practices. Because of this, PSCo has caused CORE's ownership interest in Comanche 3 to be devalued and CORE will be required to secure future electrical power for its customers at a higher cost, resulting in additional recoverable damages.

106. For these reasons, CORE suffered and will continue to suffer direct compensatory damages in an amount to be proven at trial.

107. CORE has satisfied all contractual conditions to commence this action by pursuing, without success, the pre-litigation claims procedure set forth in the agreements.

COUNT II
Declaratory Relief
(O&M Cost Recovery)

108. CORE incorporates all previous allegations as if fully alleged herein.

109. CORE and PSCo have entered into valid and enforceable agreements concerning the ownership, maintenance, and operation of Comanche 3, including the JOA and the O&M Agreement.

110. CORE is entitled to and hereby seeks a judicial determination and declaration pursuant to C.R.S. § 13-51-105, and C.R.C.P. 57, of the parties' rights, status, and other legal relations under the Project Agreements.

111. Section 3.1 of the O&M Agreement requires [redacted]

112. Section 10.3.1 of the JOA provides:

[redacted]

113. PSCo's failure to operate Comanche 3 in a manner consistent with Prudent Utility Practice is a prior material breach of the Project Agreements that excuses CORE from its obligation to pay any share of the costs incurred for the repair or reconstruction of equipment and/or facilities damaged because of PSCo's breach.

114. CORE requests the entry of a declaratory judgment that it is not required to pay any costs, including but not limited to any costs that have not yet been paid by CORE, for the repair or reconstruction of equipment and/or facilities damaged because of PSCo's breach of the Project Agreements.

115. CORE requests the entry of a declaratory judgment that CORE is entitled to recover all of the costs it has previously paid to PSCo for the repair or reconstruction of equipment and/or facilities damaged because of PSCo's breach of the Project Agreements.

COUNT III
Breach of Covenant of Good Faith and Fair Dealing

116. CORE incorporates all previous allegations as if fully alleged herein.

117. Under Colorado law, contracting parties are required to act in good faith and to deal fairly with each other in performing the express terms of the contract. The good faith performance requirement serves to effectuate the intentions of the parties or to honor their reasonable expectations.

118. The duty of good faith and fair dealing is breached when a party acts contrary to the agreed common purpose of the contract or the parties' reasonable expectations.

119. PSCo breached the covenant of good faith and fair dealing through its failure to operate Comanche 3 in a manner consistent with the parties' intentions and reasonable expectations as reflected in the Project Agreements to operate Comanche 3 in such a manner to generate a secure and reliable source of electric power available to CORE.

120. PSCo also breached the covenant of good faith and fair dealing by failing to disclose the true cause of multiple outages at Comanche 3 during its first ten years of commercial operation, which were largely a result of PSCo’s poor operating procedures.

121. Further, PSCo exercised its discretion to operate Comanche 3 in a manner that has permanently diminished and/or destroyed Comanche 3's value, and CORE's ownership interest in it, which has deprived CORE of valuable contract rights, which is inconsistent with the parties' intentions and reasonable expectations.

122. PSCo's conduct was contrary to the reasonable expectations of the parties to the contracts.

123. As a result, CORE suffered and will continue to suffer direct compensatory damages in an amount to be proven at trial.

COUNT IV
Unjust Enrichment

124. CORE incorporates all previous allegations as if fully alleged herein.

125. PSCo enjoyed an unjust benefit, at CORE's detriment, by receiving much higher payments for replacement power from CORE as a result of PSCo's failure to properly operate Comanche 3.

126. The numerous and extended unplanned outages caused by PSCo's failure to properly operate Comanche 3 resulted in CORE purchasing power from PSCo to replace the power CORE was entitled to receive from Comanche 3.

127. It would be unjust, under the circumstances, to allow PSCo to retain the benefit of its malfeasance.

128. As a result, CORE should be allowed to recover the excessive amounts paid to PSCo for replacement power as a result of PSCo's failure to properly operate Comanche 3.

COUNT V
Waste

129. CORE incorporates all previous allegations as if fully alleged herein.

130. Colorado law recognizes claims for waste by one "concurrent non-possessory holder" of an interest in property against the party in possession of the property for damaging, injuring or failing to protect the property. *Fed. Deposit Ins. Corp. v. Mars*, 821 P.2d 826 (Colo. App. 1991).

131. CORE and PSCo hold concurrent interests in Comanche 3 as tenants-in-common. PSCo is in exclusive possession of Comanche 3.

132. PSCo committed multiple acts of waste by misusing Comanche 3, neglecting to maintain Comanche 3, deficiently operating Comanche 3, causing certain components of Comanche 3 to be destroyed, and reducing Comanche 3's expected lifespan.

133. PSCo's waste has caused, without limitation, Comanche 3 to generate electricity less efficiently, increased its operating and maintenance costs, and reduced its expected lifespan.

134. PSCo's waste of Comanche 3 has permanently diminished Comanche 3's value, thereby injuring and permanently reducing the value of CORE's interest in Comanche 3 as a tenant-in-common.

135. CORE is entitled to a monetary judgment for the diminution in value of its interest in Comanche 3 caused by PSCo's waste in an amount to be proven at trial.

JURY DEMAND

CORE requests a jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Award monetary damages against PSCo and in favor of CORE in an amount to be proven at trial including but not limited to:

1. Damages related to the costs incurred by CORE to repair and replace equipment caused by PSCo's conduct;

2. Damages related to the costs incurred by CORE to purchase replacement power as a result of outages at Comanche 3 caused by PSCo's conduct;

3. Damages that will be incurred by CORE for the continuing cost to repair and replace equipment damaged by PSCo's conduct;

4. Damages that will be incurred by CORE to purchase replacement power because of outages at Comanche 3 that will continue because of the damage caused by PSCo's conduct;

5. Damages that will be incurred by CORE to purchase replacement power as a result of the premature retirement of Comanche 3 as a result of the damage to the plant caused by PSCo's conduct; and

6. Damages representing the diminution in value of CORE's interest in Comanche 3 caused by PSCo's conduct including misusing Comanche 3, neglecting to maintain Comanche 3, deficiently operating Comanche 3, causing certain components of Comanche 3 to be destroyed, and reducing Comanche 3's expected lifespan;

B. Enter a declaratory judgment that CORE is not responsible for the payment of any costs that have not yet been paid by CORE for the repair or reconstruction of equipment and/or facilities damaged because of PSCo's breach of the Project Agreements;

C. Enter a declaratory judgment that CORE is entitled to recover all of the costs it has previously paid to PSCo for the repair or reconstruction of equipment and/or facilities damaged because of PSCo's breach of the Project Agreements;

D. Award attorney's fees and costs as allowed by law;

E. Award pre and post judgment interest as allowed by law; and

F. Grant any other such relief that the Court deems just and equitable.

Respectfully submitted on this 7th day of September, 2021.

STINSON LLP

s/ Perry L. Glantz
Perry L. Glantz, Atty. Reg. No. 16869

Attorneys for Intermountain Rural Electric Association d/b/a CORE Electric Cooperative

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In accordance with C.R.C.P. 121(c) §1-26(7), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.