

<p>DISTRICT COURT, DENVER COUNTY, COLORADO  Denver City and County Building  1437 Bannock Street, Room 256  Denver, Colorado 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>CORE ELECTRIC COOPERATIVE f/k/a  INTERMOUNTAIN RURAL ELECTRIC  ASSOCIATION,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>PUBLIC SERVICE COMPANY OF COLORADO,</p> <p style="text-align: center;">Defendant.</p>	
<p><i>Attorneys for Plaintiff CORE Electric Cooperative f/k/a  Intermountain Rural Electric Association:</i>  Perry L. Glantz, Atty. Reg. No. 16869  Ryan M. Sugden, Atty. Reg. No. 49499  Judith S. Araujo, Atty. Reg. No. 54102  <b>STINSON LLP</b>  1144 Fifteenth Street, Suite 2400  Denver, Colorado 80202  Phone: 303-376-8410  Fax No: 303-376-8439  <a href="mailto:perry.glantz@stinson.com">perry.glantz@stinson.com</a>  <a href="mailto:ryan.sugden@stinson.com">ryan.sugden@stinson.com</a>  <a href="mailto:judith.araujo@stinson.com">judith.araujo@stinson.com</a></p>	<p>Case No.: 2021CV032787</p> <p>Div. No.: 424</p>
<p><b>FIRST AMENDED COMPLAINT AND JURY DEMAND</b></p>	

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

**INTRODUCTION**

1. CORE is a Colorado cooperative electric association 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 twenty-five and one-third percent (25 1/3%) 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 sixty-six and two-thirds percent (66 2/3%) interest. Holy Cross Electric Association (“Holy Cross”) owns the remaining eight percent (8%) interest.

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 power 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. This includes lengthy periods of non-operation; 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 been deprived of its entitlement to power during the numerous, lengthy outages of the unit. Further, the permanent damage to Comanche 3 that has resulted from PSCo’s misconduct will cause excessive repair and maintenance costs and unplanned outages resulting in CORE’s loss of its entitlement to power to continue in the future. 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. On December 28, 2021, CORE filed Articles of Amendment with the Colorado Secretary of State amending its name from The Intermountain Rural Electric Association to CORE Electric Cooperative.

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. On April 8, 2005, CORE entered into a series of agreements with PSCo for the ownership, construction, maintenance and operation of Comanche 3, 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, the "Project Agreements").

10. These four Project Agreements – JOA, O&M, Common Facilities, Property Rights – each define the term "Project Agreements" as follows:

"Project Agreements" means all agreements between the Parties relating to the ownership, development, construction and/or operation of all or any part of the Facility and the Common Facilities, including this Agreement [Original O&M Agreement], the Joint Ownership Agreement, the Property Rights Agreement and the Common Facilities Agreement, but excluding the financing documents of any Party.

These four Project Agreements – JOA, O&M, Common Facilities, Property Rights – set forth the rights and responsibilities of PSCo and CORE as the owners of Comanche 3, and PSCo as its "Operator."

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, PSCo, CORE and Holy Cross jointly hold, as tenants in common, undivided ownership interests in the "Facility Assets," as defined by the JOA, in the following percentages:

- a. PSCo 66 2/3%
- b. CORE 25 1/3%
- c. Holy Cross 8%

13. The “Facility Assets” include, but are not limited to, Comanche 3 and the Energy and capacity it produces. The JOA defines “Energy” as “the net measured amount of electric energy generated by the Facility [Comanche 3] and delivered to the Delivery Point for any period.” Exhibit A at p. 5.

14. Under the JOA, each party was responsible for paying its share (according to its ownership interest percentage) of “all Project Costs,” which include, among other things, all costs for the “development, design, engineering, procurement and construction of the Facility, the New Common Facilities and the upgrades to the Existing Common Facilities; and the initial inventories allocable to the Facility for spare parts, scrubber additives and materials and supplies for use in connection with the start-up and operation of the Facility, including Pre-Construction Costs, Construction Costs and Water Resource Costs.” Exhibit A at pp. 10, 12. CORE paid its share of these expenses in full in satisfaction of its obligations under the JOA.

15. CORE paid approximately three hundred sixty-six million dollars (\$366,000,000.00) for its ownership interest in Comanche 3 in April 2005. *See* Exhibit A at p. 12.

16. Under the O&M Agreement, each party was required to “pay for all O&M Costs, Facility Fuel Costs and Capital Costs in accordance with the allocation methods set forth in Article 8 and in accordance with the payment procedures set forth in Article 9.” Exhibit B at § 3.1. CORE has paid its share of these costs in satisfaction of its obligations under the O&M Agreement.

17. Pursuant to the JOA, CORE is entitled to receive a share (proportionate to its ownership interest) of the electric power and energy output from Comanche 3. Specifically, the JOA provides that CORE is entitled to receive “a percentage of the Available Net Generating Capability (as defined in Schedule 6) and associated Energy . . . equal to its Facility Percentage Share.” Exhibit A at § 2.2.1. Available Net Generating Capability is the “Net Generating Capability,” which is defined in part as the “amount of kilowatts or megawatts . . . that the Facility will supply at the Delivery Point,” but “adjusted for capacity not available, or additional capacity available, for any reason, including daily, monthly or seasonal rating changes, derates, Scheduled Maintenance, Unscheduled Maintenance, Operating Emergencies and Force Majeure.” Exhibit A at Schedule 6, § 1.1(b) (definitions).

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

## **II. PSCo Has Contractual Obligations to Operate and Maintain Comanche 3 in Accordance with “Prudent Utility Practice” and to Provide CORE with Its Bargained-for Energy Entitlement.**

19. Under the O&M Agreement, PSCo is entrusted with the “care, custody and

operating control” of Comanche 3. Exhibit B at § 2.1.2. The O&M Agreement requires PSCo to “operate and maintain the Facility and the Common Facilities and shall perform its duties under this Agreement (collectively, the “O&M Services”) for the benefit of the Owners and in accordance with this Agreement, applicable Laws, all applicable Government Approvals, Prudent Utility Practice and without adverse distinction as between and among the Parties.” Exhibit B at § 2.1.

20. “Prudent Utility Practice” is defined in the O&M Agreement as follows:

[T]he practices, methods, conduct and actions (including, but not limited to, the practices, methods, conduct and acts engaged in or approved by a significant portion of the power industry) that, at a particular time, in the exercise of reasonable judgment at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with applicable Law, standards, reliability, safety, environmental protection, good business practices, economy, and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which can fall within this description. In applying the standard of Prudent Utility Practice to any matter under this Agreement, equitable consideration shall be given to the circumstances, requirements and obligations of each of the Parties.

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

21. PSCo is obligated to operate Comanche 3 such that CORE receives the Energy to which it is entitled under the JOA. Specifically, Schedule 6, Section 2.1 of the JOA requires that:

PSCo shall operate the Facility and make available to each Party its Operating Capacity Entitlement at all times except and to the extent the Facility is not operating due to Scheduled Maintenance, Unscheduled Maintenance, Operating Emergencies and Force Majeure. Each Party’s Operating Capacity Entitlement shall further be subject at all times to any changes in the Available Net Generating Capability occurring as the result of Scheduled Maintenance, Unscheduled Maintenance, Operating Emergencies, Force Majeure, derates and the ramping capability of the Facility.

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

- a. Section 2.2.1: employ and supervise the personnel necessary for performance of the O&M Services and be exclusively responsible for all operating personnel matters;
- b. Section 2.2.3: operate and maintain the Facility and the Common Facilities in a manner consistent with appropriate safety procedures, the Operating Manuals, the

plan for Scheduled Maintenance and operating budgets prepared by Operator under this Agreement;

- c. Section 2.2.4: maintain the Facility and the Common Facilities in a good, clean and orderly condition, in accordance with Prudent Utility Practice and all insurance policies required to be maintained by Operator pursuant to this Agreement;
- d. Section 2.2.5: make all necessary repairs and replacements of equipment and parts, including all Scheduled Maintenance and Unscheduled Maintenance;
- e. Section 2.2.6: procure, contract for, and furnish the services and materials, including equipment, apparatus, machinery, spare parts, tools and supplies necessary for the performance of the O&M Services, and administer and comply with all contracts entered into by Operator with third parties that relate to the performance of this Agreement;
- f. Section 2.2.11: establish operating and performance parameters, including Minimum Net Generation, Net Generating Capability, Available Net Generating Capability, ramp rates and heat rates for the Facility from time to time; and
- g. Section 2.2.14: establish and maintain an information system to manage operating data for the Facility and the Common Facilities, including such information, assumptions, measurements and methodologies necessary to verify calculations required to be made by Operator pursuant to this Agreement.

23. Both the JOA and the O&M Agreement contain an integration clause:

JOA: “This Agreement supersedes the Original JOA and the First Amended and Restated JOA and, together with the other Project Agreements, constitutes a complete integration of the agreement between the Parties with respect to the subject matter of this Agreement and such other Project Agreements, except and to the extent that the IREA PPA and the Holy Cross PSA contain express provisions relating to the Project Agreements . . . .”

O&M Agreement: “This Agreement supersedes the Original O&M Agreement and the First Amended and Restated O&M Agreement and, together with the other Project Agreements, constitutes a complete integration of the agreement between the Parties with respect to the subject matter of this Agreement and such other Project Agreements, except and to the extent that the IREA PPA and the Holy Cross PSA contain express provisions relating to the Project Agreements . . . .”

24. Distinct from its capacity and responsibilities to CORE as Comanche 3’s “Operator” under the Project Agreements, PSCo is also a wholesale seller of electrical power. This is because PSCo owns and operates other power generating facilities. PSCo sells the power that it generates via wholesale and retail sales. In 1995, CORE entered in a Power Purchase

Agreement (“PPA”) with PSCo to purchase wholesale power from PSCo for the benefit of CORE’s members. Pursuant to this PPA, CORE agreed to purchase all of its power and energy requirements in excess of its U.S. Department of Energy Western Preference Power from PSCo at the FERC approved rates set forth therein.

25. The PPA was amended on January 1, 2004, as the Restated and Amended Power Purchase Agreement (“Amended PPA”). Again, pursuant to the Amended PPA, CORE agreed to purchase all of its power and energy requirements in excess of its U.S. Department of Energy Western Preference Power from PSCo at the FERC approved rates set forth therein. The Amended PPA also 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. On April 8, 2005, CORE exercised its option under the Amended PPA to purchase its undivided ownership interest in Comanche 3.

26. As a consequence, the Amended PPA was further amended on April 8, 2005 to recognize CORE’s ownership in Comanche 3 and its associated entitlement under the JOA to a portion of the capacity and energy generated by that unit (“Second Amended PPA”). This was the first version of the PPA that could have included an “express provision relating to the Project Agreements” as referenced in the integration clauses of the JOA and the O&M Agreement. The Second Amended PPA recognized CORE’s right to receive power and energy as an owner of Comanche 3.

27. Accordingly, the Second Amended PPA was drafted to provide for CORE to purchase power in excess of its entitlement to power from Comanche 3 under the JOA or to replace the power that was supposed to be generated by Comanche 3 but was not. The integration clause of the Second Amended PPA states:

This Agreement (including all attachments hereto), together with the Transmission Interconnection Agreement dated April 6, 1992, constitutes the entire agreement of the Parties hereto with respect to the supply by Public Service of Customer’s requirements for electricity in excess of Customer’s Western Preference Power, and Customer’s Comanche 3 Net Entitlement.

28. The JOA and the O&M Agreement (through which CORE bargained for its entitlement to Energy from Comanche 3) are not part of the Second Amended PPA. The only mention in the Second Amended PPA of CORE’s rights under the Comanche 3 Project Agreements provides that CORE would not have the right to dispatch or control its share of the electrical output of Comanche 3 by automated generation control (“AGC”).

29. The Third Amended and Restated Power Purchase Agreement, dated April 11, 2012, and the Fourth Amended and Restated Power Purchase Agreement, dated April 20, 2017, are the same as the Second Amended PPA in this regard. Therefore, the Second, Third and Fourth Amended PPAs are not included as part of the Comanche 3 Project Agreements, and the Comanche 3 Project Agreements are not part of the Second, Third and Fourth Amended PPAs. They are separate and distinct sets of agreements.

30. CORE is not claiming any breach of any of the PPAs occurred. This case is based exclusively upon PSCo's breach of one or more of its obligations under the JOA and the O&M Agreement.

### **III. PSCo has Breached its Obligations under the JOA and the O&M Agreement 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.**

31. 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 should allow 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.

32. On October 30, 2020, the PUC opened an investigatory proceeding into operational issues at Comanche 3, attached hereto as Exhibit C. 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 D. 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.*

33. 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 D 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.

34. 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 D 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 D 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 D at p. 68.

35. 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 D at p. 69.

36. 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 D at p. 68.

37. Had Comanche 3 been operated consistent with Prudent Utility Practices, its EAF would have been much higher and CORE would have received additional Energy through 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.**

38. 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.

39. 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.

40. 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.

41. Structural Integrity determined that the LP turbine blades failed due to “pit-induced stress corrosion cracking.” Exhibit E at p. 3. Structural Integrity further found that the predominant and most likely cause of this damage was PSCo’s failure to protect the turbines by using

dehumidified air to dry the metal components during shutdowns of greater than three days. This resulted in corrosion from moisture in the system, ultimately causing the blades to fail. *Id.*

42. According to Structural Integrity, the pit induced stress corrosion cracking in the L-1 turbine blades was caused by PSCo's "seriously deficient" operating practices. *Id.* Structural Integrity "reviewed the cycle chemistry at Comanche and found that the overall chemistry has been poorly managed since COD in 2010." *Id.* Structural Integrity found a host of problems with PSCo's operation of Comanche 3, including numerous specific events that had a direct influence on the blade failure:

The operating practices were seriously deficient during this time: the chemistry alarm system was either not working, turned off or ignored, and most importantly the unit should have been shut down in accordance with any international shutdown guidelines. Deposition occurred preferentially at and near the snubber, leading to pitting in oxygenated moisture during multiple non-protective shutdowns between 2012 and 2019. Other possible contaminant events were investigated in detail and although there has not been similar contamination as the March 2012 condenser leak, there has been repetitive exceedances of sodium contamination in the main steam (MS) and hot reheat (HRH).

Exhibit E at p. 48.

43. The "predominant" and "most probable root cause of the blade failure, is the lack of any chemistry shutdown protection using dehumidified air (DHA) for the steam turbine." This is a serious error by PSCo that falls far below Prudent Utility Practices. Exhibit E at p. 48.

44. Structural Integrity identified other major contributing factors to the L-1 blade failure, which again pointed back to PSCo's imprudent utility practices:

Others of major importance in the mechanism include: chemists/operators ignoring alarm and shutdown limits and maintaining operation during contamination events; not using optimum chemistry treatments (OT); and unreliable chemistry instrumentation. The information reviewed by SI [Structural Integrity] throughout the investigation suggests that the condenser contaminant event of March 2012 initiated the mechanism by contaminating the plant's internal surfaces which were not cleansed after the event.

Exhibit E at p. 48.

45. According to Structural Integrity, PSCo had commissioned a third-party inspection of the low-pressure steam turbine between September 12, 2011 and December 9, 2011. Although Comanche 3 had been commissioned for fewer than two years at that point, evidence of liquid film was already present. Testing of the film indicated the presence of sodium, chloride, iron, copper, and aluminum. The film indicated imbalances in the water chemistry which can lead to blade pitting and erosion. Nevertheless, PSCo did not inspect the steam turbine blades between the

September 2011 inspection and the January 13, 2020 failure event, imprudently ignoring a known risk. Exhibit E at p. 6.

46. Structural Integrity found other deficiencies in PSCo's operation of Comanche 3. PSCo's unit shutdown limits were "not in agreement with the international standards (IAPWS)." Exhibit E at p. 10. This is notable given that Structural Integrity found the most likely predominant cause of the L-1 Blade Failure was PSCo's improper shutdown procedures. Exhibit E at p. 3.

47. Structural Integrity found that PSCo poorly calibrated and maintained Comanche 3's instrumentation. Given the impact of cycle chemistry on Comanche 3's operations, Structural Integrity noted that it was "of paramount importance that these vital instruments work on a continuous basis." Exhibit E at p. 21. Structural Integrity found that "not all the instruments are calibrated and maintained on a regular basis, are not all reliable, are not all audibly alarmed in the control room for the operators, and that the plant has relied heavily on grab samples taken every four hours. There are also numerous examples when the key instruments (sodium at EI, MS and HRH) were not recording data for startup periods, and were out of service for long periods of time (six months)." Exhibit E at pp. 11-12. Structural Integrity unequivocally determined that PSCo "clearly needs to upgrade the maintenance and calibration activities on the chemical instruments." Exhibit E at p. 21.

48. Structural Integrity concluded that PSCo staff had "minimized" the importance of cycle chemistry instrumentation from the date Comanche 3 had been placed in operation. Further, Structural Integrity found that PSCo "will need to make some drastic improvements in this area" for Comanche 3 to be safely and efficiently operated in the future. Exhibit E at p. 12.

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

49. 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.

50. In a report prepared by a member of PSCo's Fleet Engineering group (hereinafter, the "Hunt Report"), PSCo determined that the cause of this damage was from water induction into the turbine during two events in January and September 2018. The Hunt Report is attached hereto as Exhibit F. The Hunt Report concludes this was caused by PSCo's failure properly to maintain turbine drain valves and to address the resulting distortion of the case and rotor for several years. This resulted in steam being unable to drain from the turbine, which, when cooled, caused a temperature differential between the inside and outside of the turbine and damaged the turbine as the blades rubbed against the casing as it temporarily shrank or contracted.

51. PSCo hired General Electric ("GE") to analyze and repair the damage identified in

the Hunt Report. GE found a litany of major issues with the turbine generator, including:

- a. Damage on the HP turbine blades;
- b. Severe rubbing on all of the lower half HP and IP turbine spill strips;
- c. Failure of lubrication system elements that were shedding wire mesh into the turbine oil system;
- d. Failure of PSCo to change lubrication system filters for three years, contrary to manufacturer recommendations to change filters every six months;
- e. Installation of incorrect lubrication system filter;
- f. Numerous “troubling” issues regarding the condition of intercept valves, including a valve found without a liner.

52. GE concluded that, “in general, deficient maintenance practices, questionable operating procedures and poor steam quality were observed throughout the machine.” The GE Report is attached hereto as Exhibit G-1 and G-2.

**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.**

53. 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 damages.

54. Even while CORE was suffering these damages, PSCo appeared to be looking out for its own best interests. Article 13 of the O&M Agreement requires PSCo to procure insurance for the Facility and the Common Facilities. CORE is required to pay its Total Facility Percentage Share of the costs of such insurance and any deductibles.

55. 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.**

56. 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.

57. 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.

58. 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 D at p. 22.

59. PSCo was in the process of start-up activities for Comanche 3 when a TLO alarm was triggered. Exhibit D 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 H.

60. 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 D at p. 22; *see also* Exhibit I.

61. PSA1 had been through only two start-ups, and had received no training on how to operate the TLO valve (as PSCo had no training program for this task). 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 D at p. 23.

62. 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 D at p. 24.

63. After the June 2020 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 D 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.

64. 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 D at pp. 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.

65. 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 I. The Human Performance Team Analysis found that “[n]o procedural guidance was used by PSA1 to operate the 6-way valve. No procedure was used to verify the line-up prior to valve manipulation. ... Based on interviews, few activities were conducted using specific procedural guidance to ensure proper configuration of components prior to execution. Procedures exist to verify systems are in service but do not provide specific direction for the configuration of the Turbine Lube Oil (TLO).”

66. 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.

67. 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.

68. 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.

69. 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.

70. Further, the PSCo Human Performance Team Analysis noted that the “[p]rocedure for lube oil start up does not contain adequate direction to ensure valve lineup or the desired configuration for startup – no direction in procedure for desired lineup prior to start-up of turbine.” “Poor procedure quality combined with informal configuration control practice has the potential to result in additional challenges to configuration control.” Moreover:

Troubleshooting processes may contain weaknesses, especially when working with a unit while it is in operation. The risks of starting up with two unit coolers versus one and

validating the system configuration prior to startup was not effective to ensure that the unit would startup and run without issue at a later time. Starting the unit with two turbine lube oil coolers in service may have challenged operations at a later time.

...

Low procedural standards are allowed to exist. Standards for configuration control are not clearly established with multiple levels of the organization leading to vulnerability when changing system configuration.

Exhibit I at pp. 14-15.

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

72. 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."**

73. 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 D 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.*

74. 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 D at pp. 45-46.

75. 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.

76. 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 D at pp. 35-42.

77. 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.*

78. 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.

79. 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.*



80. 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.

81. 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.*

82. This was not the first time PSCo personnel had incorrectly operated a TLO valve. In fact, PSCo’s lack of proper procedures, training, and safety and operating practices with respect to the TLO valves was clear as early as 2017 when, in an incident the GE and PUC Staff Reports document:

workers thought they had positioned the six way TLO transfer valve with the intent to isolate one side of the duplex filters, but due to improper positioning of the valve ***company personnel were doused with lube oil*** as they attempted to remove the filter housing cover (after that occurrence, it appears that routine changing of filter elements may have been suspended).

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

83. This incident vividly demonstrates PSCo’s imprudent utility practices and its failure to satisfy its O&M obligations. Not only were PSCo workers “doused with lube oil,” 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.

84. 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).

85. 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.**

86. 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.

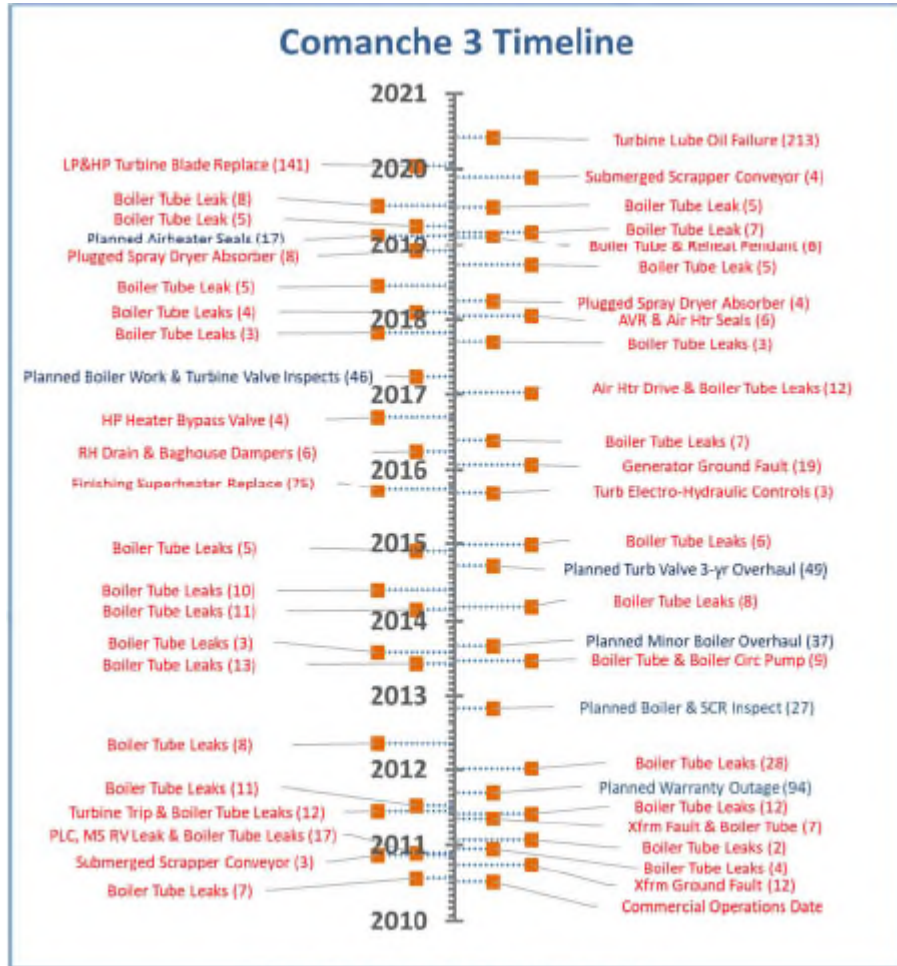


Figure 21. Comanche 3 outages timeline.

**H. CORE Incurred Millions of Dollars in Losses as a Direct Result of PSCo's Breaches of its Contractual Obligations under the JOA and the O&M Agreement.**

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

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

89. Second, CORE was deprived of its entitlement to receive the Energy that Comanche 3 failed to produce.

90. Third, the accumulated impact of PSCo's failure to operate Comanche 3 consistent with Prudent Utility Practice will result in future maintenance and repair costs and future unplanned outages depriving CORE of its entitlement to Energy as an owner of Comanche 3 for the remaining life of the plant.

91. 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. 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 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.

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

93. 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.

94. 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.

95. 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.

96. C sent its initial Notice of Claim signed by Patrick B. Mooney, CORE's Chief Executive Officer at that time, and also signed by Bryan J. Hannegan, the President and Chief Executive Officer of Holy Cross, to Alice K. Jackson, President of Xcel Energy – Colorado on February 2, 2021. Exhibit J. 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.

97. Further, the initial Notice of Claim contained a "written explanation of the Dispute

and the material particulars of the notifying Party’s position as to the Dispute” in satisfaction of Article 18.2 of the JOA.

98. 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.

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

100. This second Notice of Claim contained a “written explanation of the Dispute and the material particulars of the notifying Party’s position as to the Dispute” in further satisfaction of Article 18.2 of the JOA.

101. 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**

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

103. 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.

104. 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.

105. 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.

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

107. 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 under the JOA and O&M Agreement.

108. 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.

109. 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 lose value, resulting in additional recoverable damages.

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

111. PSCo's breaches constitute events of default under the Project Agreements, which PSCo has not cured after being given written notice thereof.

112. 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**

### **Breach of Covenant of Good Faith and Fair Dealing**

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

114. 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.

115. 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.

116. 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 JOA and O&M Agreement to operate Comanche 3 in such a manner to generate a secure and reliable source of electric power available to CORE.

117. 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.

118. 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.

119. PSCo's conduct was contrary to the reasonable expectations of the parties to the JOA and O&M Agreement.

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

### **COUNT III**

#### **Waste**

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

122. 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).

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

124. 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.

125. 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.

126. 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.

127. 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 caused by PSCo's breach of the JOA and O&M Agreement including but not limited to costs incurred by CORE to repair and replace equipment caused by PSCo's conduct and damages caused by PSCo's failure to deliver CORE's entitlement to Energy from Comanche 3;

2. Damages that will be incurred by CORE including but not limited to as a result of the harm to the Comanche 3 plant caused by PSCo's conduct and as a result of PSCo's continuing failure to deliver CORE's entitlement to Energy from Comanche 3; and

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

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

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

Respectfully submitted on this 1<sup>st</sup> day of February, 2022.

**STINSON LLP**

*s/ Perry L. Glantz*

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

*Attorneys for CORE Electric Cooperative  
f/k/a Intermountain Rural Electric Association*

Plaintiff's Address:

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Sedalia, Colorado 80135

*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.*



**CERTIFICATE OF SERVICE**

I hereby certify that on February 1, 2022, a true and correct copy was submitted electronically through the Colorado E-Filing/Service System, for filing and service on all counsel of record.

*s/Taylor L. Bradley*  
Taylor L. Bradley