

DISTRICT COURT, BOULDER COUNTY,
COLORADO

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GEORGE KUPFNER, ET AL.

Plaintiffs,

v.

XCEL ENERGY, INC., ET AL.

Defendants.

Case No. 22CV30195

The Honorable Christopher C. Zenisek

JULIE ABRAMS, ET AL.,

Plaintiffs,

v.

XCEL ENERGY, INC., ET AL.,

Defendants.

***This Document Relates to Case
No. 23CV30664
(Consolidated with
Case No. 22CV30195)***

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AMENDED COMPLAINT	

Plaintiffs Julie Abrams, William Mertens, E.M., J.M., Eric Frew, Audrey Frew, Julia Frew, M.F., Robert DeBarros, Audrey DeBarros, Elyse DeBarros, Nathan DeBarros, Jennifer Singer-Rupp, Daniel Rupp, C.R., N.R., Paul Logan, Michele Logan, S.L., N.L., Timothy Crean, Joanna Crean, Sierra Crean, C.C., Daniel Whalen, Rebecca Whalen, M.W., C.W., Craig Quincy, Lucy Quincy, P.Q., and Stacey Gurr, (collectively, Plaintiffs) hereby bring this Complaint and Jury Demand against Defendants Xcel Energy, Inc., Public Service Company of Colorado d/b/a Xcel Energy, and Xcel Energy Services, Inc. (collectively “Xcel”) seeking recovery of damages Plaintiffs sustained as a result of the Marshall Fire.

Plaintiffs allege the following against Xcel:

I. INTRODUCTION

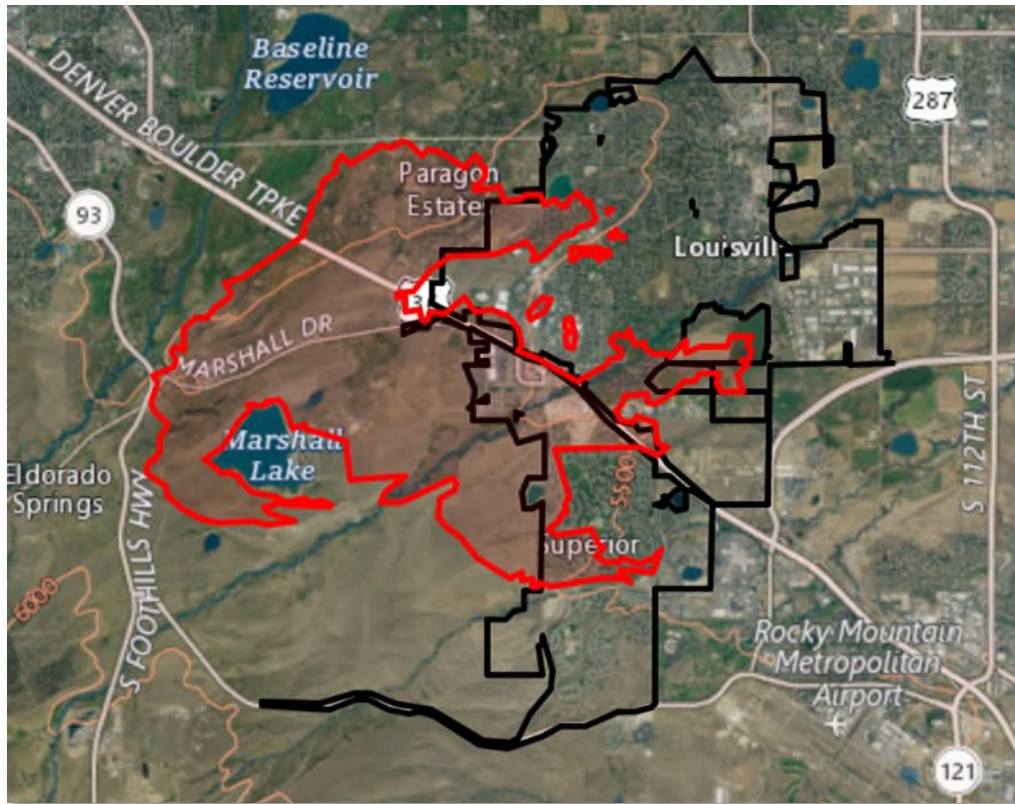
1. On December 30, 2021, the Marshall Fire, the most destructive wildfire the State of Colorado has ever seen, began its deadly rampage through Boulder County. Words cannot adequately describe the devastation that followed. Within minutes, entire neighborhoods were incinerated. The Boulder County community—and the lives of thousands of Boulder County residents—were forever changed.



Source: Jeremy Sparig, Special to The Colorado Sun, available at <https://coloradosun.com/2023/06/08/marshall-fire-investigation-results-colorado/>.

2. The Marshall Fire left behind a swath of destruction, causing billions of dollars in damages and the loss of life. Over 6,000 acres of land were burned; more than 1,200 homes and dozens of commercial structures were damaged or destroyed.¹ Tragically, two people lost their lives and thousands more were evacuated and/or displaced.

¹ Michael Dougherty and Curtis Johnson, *Marshall Fire Investigative Summary and Review* (June 8, 2003), <https://assets.bouldercounty.gov/wp-content/uploads/2023/06/marshall-fire-investigative-summary.pdf> [hereinafter BCSO Report].



Source: National Interagency Fire Center / By Kevin Hamm, The Denver Post, available at: <https://www.denverpost.com/2021/12/31/marshall-fire-map-perimeter-boulder-county-wildfire/>

3. Residents had little to no warning to escape the fire. Fear turned to panic as affected residents had little time to evacuate. Some residents escaped with little to nothing.² Many lost everything they owned. The fire moved so fast that over a thousand pets could not be rescued in time by their owners.³ The Marshall Fire left a painful scar on Boulder County communities and families that suffered losses, devastating the towns of Superior and Louisville in particular. As one resident describes it, “Twenty-five years of our lives, just gone.”⁴

² David Mullen and Seth Klamann, *Timeline: As the Marshall Fire Raced, Residents Fled their Homes and Community*, Denver Gazette (Jan. 13, 2022), https://denvergazette.com/news/wildfires/timeline-as-the-marshall-fire-raced-residents-fled-their-homes-and-community/article_1ad71254-6b2b-11ec-93e6-1f984ee25781.html.

³ Cole Sullivan, *Study finds more than a thousand pets died in the Marshall Fire*, 9 News (Dec. 30, 2022, 10:47pm MST), <https://www.9news.com/article/news/local/wildfire/marshall-fire/pets-died-marshall-fire/73-42642c5f-40ee-4349-bd8c-488bba1a4294>.

⁴ Robert Sanchez, *How Do You Rebuild Your Life After Losing Everything in the Marshall Fire?*, 5280 Denver’s Mile High Magazine (July 2022), <https://www.5280.com/how-do-you-rebuild-your-life-after-losing-everything-in-the-marshall-fire/>.

4. The Boulder County Sheriff's Office led a multi-agency, 18-month intensive investigation into the origins and causes of the Marshall Fire. A summary report of that investigation was made available to the public on June 8, 2023 ("BCSO Report").

5. The BCSO's work was substantially delayed by Xcel, which repeatedly sought to obstruct the investigation. Boulder County Sheriff Curtis Johnson and District Attorney Michael Dougherty expressed concern that Xcel "worked to delay the investigation and attempted to block investigators from interviewing key employees."⁵ Sheriff Johnson reported that Xcel was neither "forthcoming" nor "expedient" in providing information⁶ — reportedly stalling over a year in providing certain information and seeking to block disclosure of text messages showing that the company purposefully delayed the investigation.⁷ "Multiple sources close to the investigation say that was not Xcel's only maneuver in attempting to delay the investigation. According to sources, Xcel blocked the interviews with employees and made statements that did not tell the full story."⁸

6. The BCSO investigation concluded that two separate ignitions merged into a single fire. The first ignition occurred on residential property at 5325 Eldorado Springs Drive and did not involve electrical components. The second ignition ("the Xcel Ignition") occurred just south of the Marshall Mesa trailhead, which is located southeast of the intersection of Highway 93 and Eldorado Springs Drive.

⁵ Tony Kovalski and Joe Vaccarelli, *Top officials criticize Xcel for delaying Marshall Fire investigation*, Denver 7 (July 28, 2023, 11:18pm), <https://www.denver7.com/news/investigations/top-officials-criticize-xcel-for-delaying-marshall-fire-investigation>.

⁶ *Id.*

⁷ *Id.*; see also Amber Carlson, *Xcel Energy's slow response delayed Marshall fire investigation*, Boulder sheriff says, Denver Post (Aug. 7, 2023, 10:12am), <https://www.denverpost.com/2023/08/07/xcel-energy-delays-marshall-fire-investigation/>.

⁸ Kovalski and Vaccarelli, *supra* note 5.



7. BCSO investigators and experts ultimately concluded “that the most probable cause of the [Xcel Ignition] was hot particles discharged from Xcel Energy powerlines.”⁹

8. Independent engineering company Jensen Hughes was retained by the District Attorney’s office to investigate the origin and cause of the Xcel Ignition as well. Jensen Hughes documented its findings in an April 7, 2023 report, later released to the public (“Jensen Hughes Report”). That report similarly concluded that the cause of the Marshall Mesa trailhead area fire was hot particles from Xcel powerlines.

9. Jensen Hughes’s investigators also determined that Xcel could have prevented this ignition: “Xcel could have increased the sensitivity of recloser 101-507 by setting the recloser to operate one time instead of 10, and set it to lockout in the event of a fault. Xcel could have also set the trip level lower to increase the recloser sensitivity to faults. The setting

⁹ BCSO Report, *supra* note 1.

revisions could have been changed during certain weather and fire hazard conditions. This temporary setting revision would have reduced the probability of ignition of the fire.”¹⁰

10. It would not have been the first time Xcel lines started a fire. In 2003, during a windstorm in a period of extreme dryness, an Xcel line sparked a wildfire, known as the Overland Fire, which burned at least eighteen houses and 3,500 acres in Boulder County.¹¹ Then, in 2007, five died in the Cabin Creek Fire that Xcel’s equipment started. Then, in 2020, Xcel reported that its power and transmission lines sparked 647 fires in the areas of Colorado at high risk for wildfire.¹² And yet, when it learned of extreme wind and dry conditions, Xcel left its systems unaltered at full power, sparking the most devastating fire in Colorado history.

11. Plaintiffs bring this action to hold Xcel accountable for the damages and harm caused by the company’s misconduct and the resulting Marshall Fire.

II. JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to CRS § 13-1-124(1)(a)-(c) because Defendants transact business within this state, committed tortious acts within this state, and own, use, or possess real property in this state.

13. Venue is proper in this county pursuant to Colo. R. Civ. P. 398(a) & (c)(5) because this action affects real property located in this county and this county is the place where the tort was committed.

III. PARTIES

14. Plaintiff Julie Abrams is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Julie Abrams was a resident of Boulder County, living at 917 Eldorado Lane, Louisville, Colorado 80027.

15. Plaintiff William (Billy) Mertens is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Billy Mertens was a resident of Boulder County, living at 917 Eldorado Lane, Louisville, Colorado 80027.

¹⁰ Paul Way and Andrew Paris, *Marshall Mesa Trailhead Fire Investigation Report*, Jensen Hughes (Apr. 7, 2023), <https://assets.bouldercounty.gov/wp-content/uploads/2023/06/jensen-hughes-report.pdf> [hereinafter Jensen Hughes Report].

¹¹ KUSA-TV, *Xcel, Jamestown residents settle lawsuit over wildfire*, 9 News (Sept. 11, 2005, 8:50am MDT), <https://www.9news.com/article/news/local/xcel-jamestown-residents-settle-lawsuit-over-wildfire/73-344694037>.

¹² Christopher Osher, *Xcel Energy was spending \$597 million to mitigate fire risks prior to historic Marshall fire*, The Gazette (Jan. 2, 2022 updated Feb. 9, 2022), https://gazette.com/news/xcel-energy-was-spending-597-million-to-mitigate-fire-risks-prior-to-historic-marshall-fire/article_3a8a8d86-6b69-11ec-b65c-33b265b2f57f.html.

16. Plaintiff E.M. is a natural person, a minor, and a citizen of the State of Colorado. At the time of the Marshall Fire, E.M. was a resident of Boulder County, living at 917 Eldorado Lane, Louisville, Colorado 80027.

17. Plaintiff J.M. is a natural person, a minor, and a citizen of the State of Colorado. At the time of the Marshall Fire, J.M. was a resident of Boulder County, living at 917 Eldorado Lane, Louisville, Colorado 80027.

18. Plaintiff Eric Frew is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Eric Frew was a resident of Boulder County, living at 767 Nighthawk Circle, Louisville, CO 80027.

19. Plaintiff Audrey Frew is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Audrey Frew was a resident of Boulder County, living at 767 Nighthawk Circle, Louisville, CO 80027.

20. Plaintiff Julia Frew is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Julia Frew was a resident of Boulder County, living at 767 Nighthawk Circle, Louisville, CO 80027.

21. Plaintiff M.F. is a natural person, a minor, and a citizen of the State of Colorado. At the time of the Marshall Fire, M.F. was a resident of Boulder County, living at 767 Nighthawk Circle, Louisville, CO 80027.

22. Plaintiff Robert DeBarros is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Robert DeBarros was a resident of Boulder County, residing at 839 West Mulberry St, Louisville, CO 80027.

23. Plaintiff Audrey DeBarros is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Audrey DeBarros was a resident of Boulder County, residing at 839 West Mulberry St, Louisville, CO 80027.

24. Plaintiff Elyse DeBarros is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Elyse DeBarros was a resident of Boulder County, residing at 839 West Mulberry St, Louisville, CO 80027.

25. Plaintiff Nathan DeBarros is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Nathan DeBarros was a resident of Boulder County, residing at 839 West Mulberry St, Louisville, CO 80027.

26. Plaintiff Jennifer (Jenny) Singer-Rupp is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Jennifer Singer-Rupp was a resident of Boulder County, residing at 466 Muirfield Circle, Louisville, Colorado 80027.

27. Plaintiff Daniel Rupp is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Daniel Rupp was a resident of Boulder County, residing at 466 Muirfield Circle, Louisville, Colorado 80027.

28. Plaintiff C.R. is a natural person, a minor, and a citizen of the State of Colorado. At the time of the Marshall Fire, C.R. was a resident of Boulder County, residing at 466 Muirfield Circle, Louisville, Colorado 80027.

29. Plaintiff N.R. is a natural person, a minor, and a citizen of the State of Colorado. At the time of the Marshall Fire, N.R. was a resident of Boulder County, residing at 466 Muirfield Circle, Louisville, Colorado 80027.

30. Plaintiff Paul Logan is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Paul Logan was a resident of Boulder County, living at 816 W Mulberry Street, Louisville, CO 80027.

31. Plaintiff Michele Logan is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Michele Logan was a resident of Boulder County, living at 816 W Mulberry Street, Louisville, CO 80027.

32. Plaintiff S.L. is a natural person, a minor, and a citizen of the State of Colorado. At the time of the Marshall Fire, S.L. was a resident of Boulder County, living at 816 W Mulberry Street, Louisville, CO 80027.

33. Plaintiff N.L. is a natural person, a minor, and a citizen of the State of Colorado. At the time of the Marshall Fire, N.L. was a resident of Boulder County, living at 816 W Mulberry Street, Louisville, CO 80027.

34. Plaintiff Timothy (Tim) Crean is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Tim Crean was a resident of Boulder County, residing at 964 Eldorado Lane, Louisville, Colorado 80027.

35. Plaintiff Joanna Crean is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Joanna Crean was a resident of Boulder County, residing at 964 Eldorado Lane, Louisville, Colorado 80027.

36. Plaintiff Sierra Crean is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Sierra Crean was a resident of Boulder County, residing at 964 Eldorado Lane, Louisville, Colorado 80027.

37. Plaintiff C.C. is a natural person, a minor, and a citizen of the State of Colorado. At the time of the Marshall Fire, C.C. was a resident of Boulder County, residing at 964 Eldorado Lane, Louisville, Colorado 80027.

38. Plaintiff Dan Whalen is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Dan Whalen was a resident of Boulder County, living at 906 Eldorado Lane Louisville, CO 80027.

39. Plaintiff Rebecca Whalen is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Rebecca Whalen was a resident of Boulder County, living at 906 Eldorado Lane Louisville, CO 80027.

40. Plaintiff M.W. is a natural person, a minor, and a citizen of the State of Colorado. At the time of the Marshall Fire, M.W. was a resident of Boulder County, living at 906 Eldorado Lane Louisville, CO 80027.

41. Plaintiff C.W. is a natural person, a minor, and a citizen of the State of Colorado. At the time of the Marshall Fire, C.W. was a resident of Boulder County, living at 906 Eldorado Lane Louisville, CO 80027.

42. Plaintiff Craig Quincy is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Craig Quincy was a resident of Boulder County, residing at 892 Larkspur Court, Louisville, Colorado 80027.

43. Plaintiff Lucy Quincy is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Lucy Quincy was a resident of Boulder County, residing at 892 Larkspur Court, Louisville, Colorado 80027.

44. Plaintiff P.Q. is a natural person, a minor, and a citizen of the State of Colorado. At the time of the Marshall Fire, P.Q. was a resident of Boulder County, residing at 892 Larkspur Court, Louisville, Colorado 80027.

45. Plaintiff Stacey Gurr is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Stacey Gurr was a resident of Boulder County, residing at 398 West Street, Louisville, Colorado 80027.

46. Defendant Xcel Energy, Inc. (“Xcel Energy”) is a major electric and natural gas delivery company operating in eight states, including Colorado.¹³ Xcel Energy is a Minnesota corporation with its principal place of business at 414 Nicollet Mall, Minneapolis, Minnesota.

47. Defendant Xcel Energy Services, Inc. (“XES”) is a subsidiary of Xcel Energy. XES is a Delaware corporation with its principal place of business at 414 Nicollet Mall, 401-9, Minneapolis, MN 55401, a business office at 1123 West 3rd Avenue, Denver, CO 80223, a business office at 1800 Larimer Street, Denver, CO 80202, and a registered agent at 1900 W Littleton Blvd, Littleton, CO 80120. XES provides an array of support services, including wildfire mitigation planning, to Public Service Company of Colorado and other utility operating company subsidiaries of Xcel Energy on a coordinated basis.

48. Defendant Public Service Company of Colorado (“PSCo”) is a subsidiary of Xcel Energy. PSCo is a Colorado corporation with its principal place of business at 1800 Larimer Street, Suite 1100, Denver, Colorado. (Defendants Xcel Energy, XES, and PSCo are herein collectively referred to as “Xcel.”)

¹³ Xcel Energy Annual Report (Form 10-K) for the fiscal year ended December 31, 2022, available at <https://www.sec.gov/Archives/edgar/data/72903/000007290323000007/xel-20221231.htm>.

49. Defendants Does 1-10 are persons, officers, employees, agents, servants, corporations, or associates of Xcel Energy and PSCo whose true identities are currently unknown to Plaintiffs. On information and belief, Does 1-10 may be responsible, in whole or in part, for Plaintiffs' damages and the tortious conduct alleged herein.

IV. FACTUAL ALLEGATIONS

A. Xcel was aware of the risk of catastrophic fires, particularly in the Front Range.

50. Xcel Energy is "a major U.S. regulated electric and natural gas delivery company," operating the fourth largest transmission system in the United States. Xcel serves 3.8 million electricity customers in Colorado, New Mexico, Texas, Michigan, Wisconsin, Minnesota, and the Dakotas.¹⁴ Xcel Energy also serves 2.1 million natural gas customers, among other operations in the energy field.

51. Xcel owns, builds, operates, and maintains power lines and other electrical equipment and infrastructure to transmit and sell electricity in Colorado, including in and around the Xcel Ignition Point of the Marshall Fire.

52. Xcel trades on the NASDAQ stock exchange as XEL. As of December 2022, Xcel's assets exceeded \$61 billion.¹⁵

53. Electrical power infrastructure includes transmission lines, which transport electricity at high voltages across long distances, and distribution lines, which deliver electricity to neighborhoods and communities over a shorter distance. Xcel has more than 100,000 miles of electrical transmission lines and 200,000 miles of distribution lines.¹⁶

54. Xcel Energy, which does business in Colorado through its subsidiary PSCo, has 4,615 miles of transmission lines in Colorado, and a service area of more than 8,200 square miles.¹⁷

55. The State of Colorado has vested Xcel with the power of eminent domain pursuant to C.R.S.A. § 38-5-105, allowing it to take private property for public use as part of its operations as a public utility company.

56. Xcel assures its customers that its transmission lines are safe. On its website, Xcel states, "Every effort is made to ensure safety in construction, operation and maintenance of transmission lines. Lines and line infrastructure are designed to withstand extreme weather conditions. Protective devices at line terminals stop the electricity flow under any abnormal

¹⁴ *Id.* at 4; *see also About Us, Corporate Governance*, Xcel Energy <https://co.my.xcelenergy.com/s/about/corporate-governance> (last visited Nov. 8, 2023).

¹⁵ Xcel Energy Annual Report (Form 10-K) *supra* note 13 at 5.

¹⁶ *Id.*

¹⁷ *About Transmission*, Xcel Energy (Jan. 24, 2019), https://www.transmission.xcelenergy.com/staticfiles/microsites/Transmission/Files/PDF/Resources/xcel_transmissionfactsheet.pdf.

operating circumstances. Utility practices meet or exceed standards set by national electric safety codes as well as those adopted by local governments.”¹⁸

57. Transmitting and distributing electricity carry inherent danger. Electrical infrastructure also poses significant dangers, particularly the threat of wildfire. Large, utility-caused fires are an increasingly common event in the American West. The 2017 Thomas Fire and the 2018 Camp Fire in California, and the 2020 Labor Day Fires in Oregon were all deadly, devastating, and caused by power lines.

58. Before the Marshall Fire, Xcel was well aware of the year-round wildfire risk created by its activities. In 2019, Xcel submitted its Wildfire Mitigation Plan to Colorado regulators. In the program overview on its website, Xcel acknowledges the significant risk of wildfires:¹⁹

Wildfire Mitigation Program

At Xcel Energy, we recognize that wildfires pose a significant year-round threat to our customers, communities and our state as a whole – and we’re proactively implementing programs to improve safety and minimize ignition risks associated with operating our system.

As part of our commitment to safety, our comprehensive Wildfire Mitigation Program was designed to help protect lives, homes and property in Colorado. Our portfolio of programs ensures we continue to construct, maintain and operate the electric grid in a manner that reduces wildfire risk. To learn more about these programs, visit [XcelEnergyWildfireMitigation.com](https://www.xcelenergywildfiremitigation.com) (external link).

59. Leading up to the Marshall Fire, XES employees directed Defendants’ wildfire mitigation work from XES offices in Denver. For example, in July 2020, Sandra Johnson, testified on behalf of Defendants as their Wildfire Mitigation Project Director. Johnson’s business office is in Denver. She testified that as Wildfire Mitigation Project Director, she was responsible for “all aspects of Public Service’s Wildfire Mitigation Program and Wildfire Mitigation Plan (“WMP” or “Plan”) development, capital and expense management, and execution.” Similarly, Denver-based Steven Rohlwing, Manager of Asset Risk Management at XES, is responsible for PSCo’s evaluation of wildfire risk and its wildfire risk modeling for its WMP.

¹⁸ *Transmission FAQ*, Xcel Energy, <https://www.transmission.xcelenergy.com/About/FAQ> (last visited Nov. 8, 2023).

¹⁹ *Wildfire Mitigation Program*, Xcel Energy, https://www.xcelenergy.com/company/rates_and_regulations/filings/wildfire_mitigation_program (last visited Nov. 8, 2023); *Program Overview*, Xcel Energy, <https://www.xcelenergywildfiremitigation.com/program-overview/> (last visited Nov. 8, 2023).

60. In that 2020 WMP, PSCo explained that “recent increases in the occurrence of severe weather events has impacted both the frequency and intensity of wildfires in Colorado,” which has “changed the risk profiles that wildfires present to utilities,” noting devastating utility-caused wildfires in California.

61. The WMP explains that Xcel designated certain areas as “Wildfire Risk Zone” (“WRZ”) based on data from the Colorado State Forest Service’s Colorado Wildfire Risk Assessment Plan (“CO-WRAP”), and it said the company was focusing “virtually all” of its Wildfire Mitigation Program efforts in the WRZ.

62. PSCo filed a verified application for approval of its proposed WMP and Wildfire Protection Rider (“the Rider”) with the Public Utilities Commission (“PUC”) of Colorado. Through the Rider, Defendants sought to recover costs related to wildfire mitigation, charging customers through the end of 2025 based on the amount of electricity used.²⁰

63. In the application process, several Colorado-based XES and PSCo executives, including Johnson and Rohlwing, testified to the PUC. In addition, Brooke Trammell, a Denver-based Regional Vice President of Rates and Regulatory Affairs at XES, testified that one of the factors that weighed in favor of approving the WMP was the “potential for catastrophic risk, including loss of life, serious property damage, and environmental harm associated with wildfire.”

64. Trammell continued: “... one only needs to look to the recent tragedies in California to understand the severity in risk... increased risk of wildfires is present in [PSCo’s] service territory and there is increased risk that potential fires could lead to catastrophic levels of damage.”²¹

65. Xcel knew that wildfires could cause catastrophic levels of damage—and that these risks were increasing. Like Trammell, Rohlwing noted that the risk of wildfires in developed areas where population density is higher includes “direct impacts to human safety, fire damage to building structures and personal property[.]”²²

²⁰ Lucy Haggard, *Xcel Energy looks to avoid Colorado wildfires — and PG&E’s fate — and wants customers to pay for it*, The Colorado Sun (Jan. 20, 2021, 3:43am MST), <https://coloradosun.com/2021/01/20/xcel-energy-wildfire-protection-rider-pge/>.

²¹ Direct Testimony and Attachments of Brooke A. Trammell, *In the Matter of the Application of Public Service Company of Colorado for Approval of Wildfire Mitigation Plan and Wildfire Protection Rider*, Proceeding No. 20A-XXXXE (PUC Colorado, July 17, 2020), Hearing Exhibit 101, 49:6-14, [https://www.xcelenergy.com/staticfiles/xcel-responsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing Exhibit 101- Direct Testimony-Trammell.pdf](https://www.xcelenergy.com/staticfiles/xcel-responsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing%20Exhibit%20101-Direct%20Testimony-Trammell.pdf).

²² Direct Testimony and Attachments of Steven D. Rohlwing, *In the Matter of the Application of Public Service Company of Colorado for Approval of Wildfire Mitigation Plan and Wildfire Protection Rider*, Proceeding No. 20A-XXXXE (PUC Colorado, July 17, 2020),

66. Xcel knew that risk was specific to the Front Range: “[s]ome of the direct and immediate impacts [of wildfires in PSCo’s Front Range service area] may include loss of human life, loss of wildlife and protected species, property damage, loss of habitat, and the potential for significant infrastructure damage, such as reservoirs and watershed areas, pipelines, electric lines, and other facilities.”²³

67. But that’s not all. Rohlwing explained that “the full social and economic costs of a wildfire are extensive and generally more difficult to estimate than the direct costs incurred during the suppression of a wildfire as they can have long-lasting impacts on a given area or region.”²⁴

68. Xcel knew that in its service area, Boulder County was a particularly high risk of catastrophic damage related to wildfires. When asked which counties in Colorado have the highest percentage of housing units in high risk wildfire areas, Rohlwing identified Boulder County: “The counties in Colorado within the top five in terms of either the largest number or highest concentration of housing units in the ‘high to extreme’ wildfire risk category are **Jefferson, Larimer, Boulder, El Paso, Summit, Gilpin, Clear Creek**, San Miguel, Hinsdale, and San Juan Counties. Seven [sic] of these counties (in bold above) compromise areas within Public Service’s service territory, and are either fully or partially located within the [WRZ]... representing a significant proportion of electric distribution and transmission assets serving these areas.”²⁵

69. Despite Xcel’s knowledge of the catastrophic levels of damage for which Boulder County was at high to extreme risk, Xcel in 2021 did not even spend all the money it had budgeted for wildfire mitigation in Boulder County.²⁶

Hearing Exhibit 104, 9:18-20, [https://www.xcelenergy.com/staticfiles/xcel-responsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing Exhibit 104- Direct Testimony Rohlwing.pdf](https://www.xcelenergy.com/staticfiles/xcel-responsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing%20Exhibit%20104-Direct%20Testimony%20Rohlwing.pdf).

²³ *Id.* 10:5-8.

²⁴ *Id.* 10:13-16.

²⁵ *Id.* 18:3-10

²⁶ *Wildfire Mitigation Plan 2021 Annual Report*, Xcel Energy (May 20, 2022), <https://www.xcelenergy.com/staticfiles/xcel-responsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/2021%20Wildfire%20Annual%20Report.pdf>.

Table 6 – 2021 Actual and Budgeted Investment by County

2021 Actual Investment Compared to Budget by County (\$ Million)			
County	Actuals	Budget	Variance \$
Adams	\$0.144	\$0.000	\$0.144
Alamosa	\$20.771	\$16.220	\$4.551
Arapahoe	\$2.036	\$0.250	\$1.786
Boulder	\$11.136	\$15.330	(\$4.194)
Broomfield	\$0.002	\$0.000	\$0.002
Chaffee	\$0.826	\$1.890	(\$1.064)

70. Statewide, PSCo spent over \$20 million less on wildfire mitigation work than it had budgeted in 2021 on distribution lines.²⁷

Table 4 – 2021 Actual and Budgeted Investment

2021 Actual Compared to Budget Investment (\$ million)								
Business Unit	Actuals		Budget		Variance \$		Variance %	
	O&M	Capital Expenditures	O&M	Capital Expenditures	O&M	Capital Expenditures	O&M	Capital Expenditures
Distribution	\$4.424	\$67.354	\$6.606	\$87.539	(\$2.182)	(\$20.185)	33%	23%
Transmission	\$0.964	\$34.571	\$0.919	\$28.900	\$0.045	\$5.671	5%	20%
Total	\$5.388	\$101.925	\$7.525	\$116.439	\$0.123	(\$14.339)	28%	12%

71. The risk associated with electrical infrastructure is recognized nationally. The Institute of Electrical and Electronics Engineers (“IEEE”) publishes the National Electrical Safety Code (“NESC”), which Colorado has adopted.²⁸ The NESC covers work rules for the construction, maintenance, and operation of electric supply lines and equipment, as well as basic provisions for safeguarding people from hazards related to the installation, operation, or maintenance of electric supply lines station equipment.²⁹

²⁷ *Id.*

²⁸ Department of Regulatory Agencies, Public Utilities Commission, Rules Regulating Electric Utilities, 4 CCR 723-3,

https://drive.google.com/file/d/0B8qvU2knU8BkcEJneE93YkNRQmM/view?resourcekey=0-XGWvr_3zVqbuKs9g1SpG1Q (last visited Nov. 8, 2023).

²⁹ C2-2012 – National Electric Safety Code(R) (NESC(R)), IEEE Xplore (Aug. 1, 2011), <https://ieeexplore.ieee.org/document/5967877>.

72. The NESC outlines the proper procedure for maintaining and operating safe electric supply lines and equipment, which Xcel failed to do. Xcel's failure to properly maintain and operate safe electric supply lines and equipment led to the ignition of the Marshall Fire.

B. Xcel had notice of the high wind event and fire danger in December 2021.

73. Strong winds are commonplace in Colorado, especially on the Front Range in winter. As the National Weather Service explains, "The two main causes of high winds in Colorado during the cold season are the air pressure difference between strong low pressure and cold high -pressure systems, and Chinook winds developing across the Front Range and other mountain ranges."³⁰ The National Weather Service also notes that "The areas around Boulder...are especially prone to the extreme wind episodes."³¹

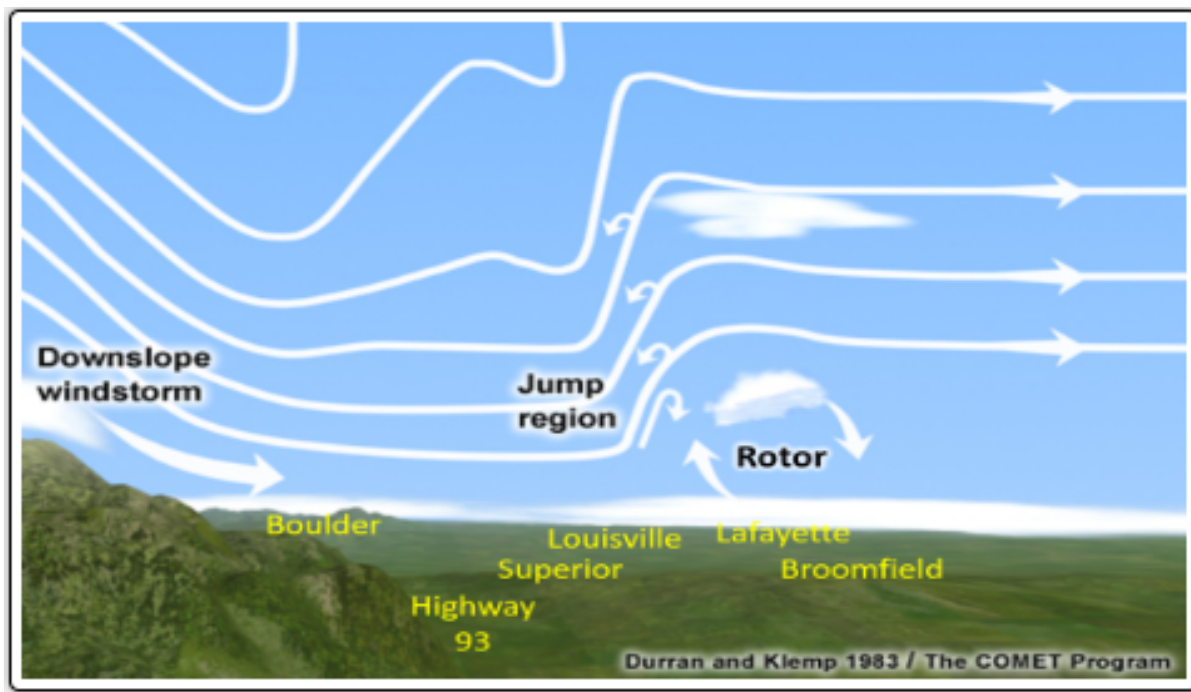
74. Mountain waves, which cause persistent and extremely high winds, are a common phenomenon in Boulder County. Mountain waves are "stationary or standing atmospheric waves which form above or on the lee of mountain barriers."³² Strong westerly winds accelerate down the mountain to the foothills, until they suddenly weaken in what is known as the jump region. Winds are strongest where the terrain transitions, or where foothills meet the plains, as they do in Boulder County.³³

³⁰ *High Wind Safety, Denver/Boulder, CO*, Nat'l Weather Serv., <https://www.weather.gov/bou/highwind#:~:text=The%20two%20main%20causes%20of,Range%20and%20other%20mountain%20ranges> (last visited Nov. 8, 2023).

³¹ *Id.*

³² Alberta Viera, *Mountain Wave Activity Over the Southern Rockies*, Albuquerque Center Weather Service Unit (Apr. 2005), <https://www.weather.gov/media/abq/LocalStudies/MountainWavesUpdate.pdf>.

³³ *Marshall Fire and High Wind on December 30 2021*, Nat'l Weather Serv., <https://www.weather.gov/bou/MarshallFire20211230> (last visited Nov. 8, 2023).



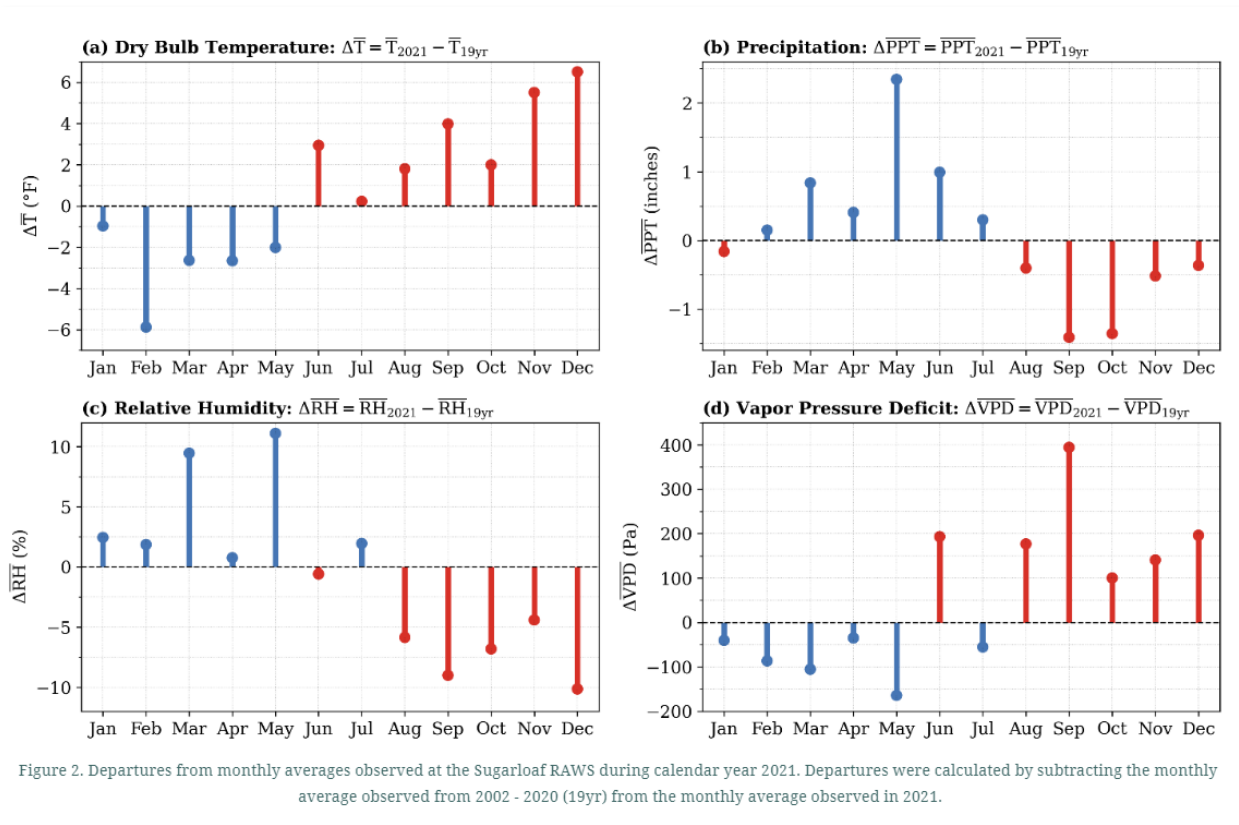
75. On December 30, 2021, a mountain wave developed in Boulder County. This caused sustained high winds of 50 to 60 miles per hour with gusts of 80 to 100 miles per hour along Highway 93, Superior, and Louisville.³⁴ While extreme, this was not anomalous – winds exceed 80 miles per hour most years in Boulder.³⁵ The wind accelerated through Superior and Louisville before weakening in the jump region before Broomfield and Lafayette.

76. These winds presented clear fire danger, especially when combined with the fuel-rich environment that resulted from 2021’s climate and weather conditions. The first five months of 2021 were cooler and wetter than average, while the second half of the year was significantly hotter and drier than average.³⁶

³⁴ *Id.*

³⁵ *Boulder Wind Info*, NOAA Physical Sciences Laboratory, <https://psl.noaa.gov/boulder/wind.html> (last visited Nov. 8, 2023); *see also*, BCSO Report, *supra* note 1.

³⁶ *Marshall Fire, Facilitated Learning Analysis*, <https://storymaps.arcgis.com/stories/83af63bd549b4b8ea7d42661531de512> (last visited Nov. 8, 2023).



77. The cooler, wetter growing season had led to abundant vegetation and substantial grass growth in the first half of the year. But when the temperature rose and the humidity dropped in the second half of the year, that abundant vegetation dried out.

78. Wildland grasses that are susceptible to ignition posed a particular threat on Marshall Mesa. Flanked by Highway 93 to the west and the towns of Superior and Louisville to the east, Marshall Mesa is a popular recreational land that “preserves a rare remnant of dry tall-grass prairie.”³⁷ The vegetation in the area was a mix of two ecosystems, Western Great Plains Foothills and Piedmont Grassland and Southern Rocky Mountain Ponderosa Pine Woodland and Savanna.³⁸

79. The vapor pressure deficit, which measures the difference between the potential moisture-holding capacity of the air and the amount of moisture in the air, indicated that the moisture was depleted from vegetation at the end of 2021, and it had been for months. In other words, in December 2021, “wildland grasses were tall, dry, and susceptible to ignition.”³⁹

³⁷ *Marshall Mesa Loop*, Visit Boulder, <https://www.bouldercoloradousa.com/listings/marshall-mesa-loop/2525/> (last visited Nov. 8, 2023).

³⁸ Jensen Hughes Report, *supra* note 10.

³⁹ BCSO Report, *supra* note 1.

80. Furthermore, the Colorado State Forest Service – whose data Defendants used to determine their own WRZ⁴⁰ – has a Wildfire Risk Public Viewer, and the United States Forest Service has a Wildfire Risk to Communities portal. Both calculate risk of wildfire, and prior to the Marshall Fire, both identified the area of the Marshall Fire as being high or highest risk.

81. Marshall Mesa was a high or highest fire risk area of wildland grasses “susceptible to ignition” and easterly winds, with the towns of Louisville and Superior on its western edge.

82. Around 3 a.m. on December 30, the National Weather Service in Boulder extended a warning of high wind that had been in effect in mountain locations to the Denver metro area, and it discussed the danger of the rapid spread of a possible fire. Boulder County also issued a high wind warning, warned against burning, and cautioned that power lines would be blown over.⁴¹



83. Monitoring the weather is part of Xcel’s Wildfire Mitigation Plan. Xcel’s WMP explains: “Company meteorologists monitor and compile relevant weather information

⁴⁰ 2020 Wildfire Mitigation Plan at 6, Xcel Energy, https://www.xcelenergywildfiremitigation.com/wp-content/uploads/2021/05/PSCo_2020-Wildfire-Mitigation-Plan_Rev-1-.pdf (last visited Nov. 8, 2023) [hereinafter 2020 WMP].

⁴¹ @BldrCOSheriff, X (formerly Twitter) (Dec. 30, 2021, 6:03am), <https://twitter.com/BldrCOSheriff/status/1476554585116270595>.

such as Red Flag Warning days and High Fire Risk information gathered from various public sources, such as the National Weather Service. The information is gathered for the entire state of Colorado but is displayed to highlight the Company's service territory. The Company also uses Indji Watch, which is a tool that provides information on environmental threats like active fires that the Company monitors for proximity to Company assets. That information is used to adjust operations protocols and field crew work practices to ensure employee safety."

84. Defendants knew that simply monitoring and compiling weather information from public sources might not be enough. As Sandra Johnson, Xcel Energy Services Inc.'s Wildfire Mitigation Project Director, testified to the PUC in July 2020, "The Wildfire Mitigation Team will continue to evaluate the addition of situational awareness tools, such as incorporating a select few optimally-placed [sic] weather stations to provide current, location-specific weather data."⁴²

85. In July 2020, then, Defendants were still only "evaluating" whether to incorporate a "select few" weather stations in their service area in Colorado spanning more than 8,200 square miles. By comparison, as of January 7, 2020, San Diego Gas & Electric, which has a service area of 4,100 square miles, had 191 weather stations, 100 of which provided weather observations every 30 seconds.

86. Thus, on December 30, 2021, on information and belief, Defendants had no weather stations in Boulder. Instead, Defendants only had the forecast to rely on.

87. The forecast proved true – but Defendants appear to have not heeded the forecast or taken appropriate measures to mitigate the risk. The warned-of extreme winds and fire danger manifested in three fires in the Boulder area, putting Xcel on further notice of the risk of fire. By the time reports of what would become the Marshall Fire came in, two small fires had already ignited and been contained that day in north Boulder. While crews were able to control the other fires, the third fire—the Marshall Fire—spread rapidly.⁴³ Subsequent investigation identified a key area of origin for what became the Marshall Fire: just south of the Marshall Mesa trailhead, near and downwind from an Xcel Energy pole, at the Xcel Ignition site.⁴⁴

⁴² Direct Testimony and Attachments of Sandra L. Johnson, *In the Matter of the Application of Public Service Company of Colorado for Approval of Wildfire Mitigation Plan and Wildfire Protection Rider*, Proceeding No. 20A-XXXXE (PUC Colorado, July 17, 2020), Hearing Exhibit 102, 34:5-8, [https://www.xcelenergy.com/staticfiles/xeresponsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing Exhibit 102- Direct Testimony Johnson.pdf](https://www.xcelenergy.com/staticfiles/xeresponsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing%20Exhibit%20102-Direct%20Testimony%20Johnson.pdf).

⁴³ Ben Markus, *Boulder County firefighters lost crucial early minutes because they couldn't find the start of the Marshall fire*, CPR News (Jan. 5, 2022, 4:47pm), <https://www.cpr.org/2022/01/05/boulder-county-marshall-fire-timeline/>.

⁴⁴ Jensen Hughes Report, *supra* note 10.

C. Xcel failed to respond to the high wind warnings.

88. Xcel Energy is aware that wildfires pose a significant year-round threat to its customers and communities.⁴⁵ Xcel Energy is also aware that—as climate conditions have changed throughout the west—the overall risk, frequency, and severity of wildfires has increased, requiring investments in the power grid to minimize the risk of equipment-caused wildfires.⁴⁶

89. Xcel’s electrical distribution circuit in the Marshall Mesa trailhead area had two devices that were intended to serve as protection: a circuit breaker and associated relay and a recloser.⁴⁷

90. The first device, a circuit breaker, was associated with what is known as an ABB type MMCO Microprocessor Time Overcurrent Relay, which monitors the line’s electrical conditions. It is designed to sense both high current faults and excessive current demand.⁴⁸

91. The second device, a recloser, is essentially a high-voltage circuit breaker designed to handle faults.⁴⁹ When it detects a fault, a recloser shuts off power and then attempts to restore power almost immediately. If it detects a fault again, it shuts off power again before once again trying restoring power, repeating the attempts for a set number of times before it determines the fault is permanent and it keeps power off. Reclosers are helpful when the fault is temporary, like a tree branch or animal hitting a powerline, for example.

92. Engineers adjust a recloser’s sensitivity by setting the number of times it will operate, setting the trip level it will consider a fault, and setting the number of attempts before its lockout stage.⁵⁰ These settings are sometimes referred to as “one shot,” “two shot,” and so on, depending on the number of attempts before lockout. To keep people and structures safe, engineers at power companies should change these settings to account for certain weather and hazard conditions. Reclosers should be coordinated with the station’s circuit breaker so that any faults downstream from the recloser are sensed and cleared by the recloser first.

93. For at least 30 years, utilities have also known that reclosers re-energizing lines in fault conditions can start fires. If, for example, a power line breaks and falls into a tree or bush, a recloser’s attempts to resume the flow of electricity may ignite a fire. Xcel knew or should have

⁴⁵ *Wildfire Mitigation Program, Information Sheet, Colorado*, Xcel Energy (2023), https://www.xcelenergywildfiremitigation.com/wp-content/uploads/2023/04/Xcel_Energy_-_Wildfire_Mitigation_Program_Information_Sheet.pdf.

⁴⁶ *Id.*

⁴⁷ *Reclosers Technical Data, What is a recloser?*, Eaton (July 2017), <https://www.eaton.com/content/dam/eaton/products/medium-voltage-power-distribution-control-systems/reclosers/recloser-definition-information-td280027en.pdf>.

⁴⁸ Jensen Hughes Report, *supra* note 10.

⁴⁹ *Id.*

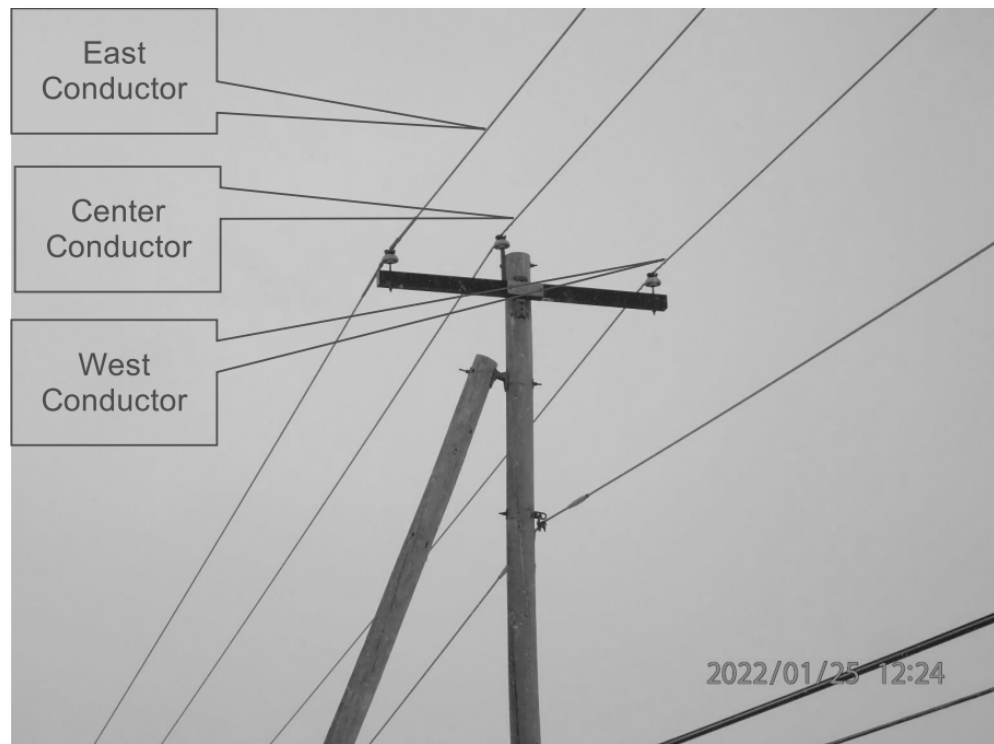
⁵⁰ *Id.*

known to adjust its reclosers during extreme wind events and dry conditions but, upon information and belief, did not do so in the circumstances of the Marshall Fire.

94. Or, as Xcel put it in its WMP, “...automatic reclosing can sometimes introduce a risk of ignition.”⁵¹

95. There are ways to mitigate this risk of ignition, though. As Xcel explained, “Public Service has been exploring modifying automatic recloser settings when conditions warrant, such as during fire season. One modification is to set the recloser such that it does not close the line back in automatically. This is sometimes referred to as ‘lock-out.’ By setting a recloser to lock-out, it can reduce the risk of ignition.”⁵²

96. The structures commonly referred to as powerlines include conductors, crossarms, poles, and insulators. Xcel’s powerline near the Marshall Mesa trailhead has an east, a center, and a west conductor, all of which are supported by porcelain pin-type insulators and mounted on the cross arm. The conductors were lashed to the insulators with aluminum lashing wire.



⁵¹ 2020 WMP, *supra* note 40 at 68.

⁵² *Id.*

97. Photographs and video from the day of the Marshall Fire show the east conductor disconnected from its insulator, bouncing and moving dramatically. A trail camera also captured the east conductor unattached from its insulator, resting against the support brace.⁵³

98. The lashings from the east conductor that connected it to the insulator was eventually found on the ground under the distribution line. It showed evidence of electrical arcing, which occurs when electricity jumps between connections, causing extremely hot and intense flashes of electricity.

99. The Jensen Hughes Report found, *inter alia*:

A. The east phase of Xcel’s circuit 1161 came loose from its insulator and its lashing wire contacted the center phase, which produced hot aluminum particles that ignited the Xcel Fire.

B. “Photographs and video of the eastern conductor show that it was bouncing and moving in a dramatic way.”

C. Xcel’s own conclusions about the fire presented on October 11, 2022 were incorrect since Xcel apparently ignored arcing evidence and the repeated operation of circuit breaker 1161.

D. Xcel could have increased the sensitivity of its recloser by setting it to operate one time instead of ten, and by setting it to lockout in the event of a fault. Xcel also could have increased the sensitivity of the recloser to faults by setting the trip level lower. These setting revisions could be temporary and could have been changed during certain weather and fire hazard conditions, which would have reduced the probability of igniting a fire.

100. The Jensen Hughes Report concluded that Xcel engineers had not set the recloser’s sensitivity settings appropriately such that the collision of conductors likely caused hot particles from the wire—including essentially a super-hot chunk of aluminum wire itself—to fly off of the conductor in an arcing event. Those particles then fell to the abnormally dry grassland below, where winds were gusting over 100 miles per hour.

101. One of the tools that utility companies, including Xcel Energy, utilize to mitigate wildfire risks during dangerous conditions is a public safety power shutoff (“PSPS”). This involves preemptively shutting off power, which ensures that equipment cannot start a fire. Utility operators’ plans to de-energize power equipment during extreme fire conditions are standard industry practice.

102. The practice of de-energizing power lines in times of high fire risk is commonplace in regions accustomed to wildfires. Xcel chose not to de-energize its power lines on the date of the Marshall Fire.

⁵³ BCSO Report, *supra* note 1, Exhibit 4.

103. As a multistate, multibillion-dollar power company, Xcel Energy has long been aware of the effectiveness of de-energizing power lines as a tool to guard against wildfire. It knew what factors should lead to a decision to shut off power or adjust the circuit or recloser settings. It knew the deadly and destructive consequences of leaving power lines energized during summer windstorms.

104. Xcel was aware of the weather and high wind warnings ahead of December 30, 2021. It knew that it was critical to manage and safely operate power lines in the face of fire risk that could emerge anywhere in Colorado, particularly in the right conditions. Despite knowledge of these weather warnings, Xcel chose not to shut down the power or adjust the circuit or recloser settings.

D. Plaintiffs Suffered Injury to Their Property

The Abrams & Mertens Family

105. Julie Abrams and Billy Mertens are homeowners and residents of Boulder County. Before the Marshall Fire, they lived at their house in Louisville, Colorado, with their children E.M. and J.M. They had lived at their home for nearly twenty years.

106. Julie and Billy had improved their home prior to the Marshall Fire, renovating the basement, adding an office, kitchens, bathrooms; replacing windows, flooring, and paint; installing and upgrading indoor and outdoor storage, a new roof, and many more improvements. On December 20, 2021, they were just finishing up painting the exterior of the house, as shown in the photo below.



107. The Abrams/Mertens family home was fully destroyed, including all of their belongings, sentimental objects, and nearly all of their possessions.



108. In the aftermath of the Marshall Fire, Julie Abrams lost business income because she was unable to work for two months due to the difficulty of the fire recovery. The time-consuming process of the fire recovery resulted in the loss of work for Julie on an ongoing basis, due to a reduction in the hours she was able to work.

109. Every member of the Abrams/Mertens family have experienced emotional distress in the aftermath of the fire, including the loss of sleep, stress, and more, including some family members requiring prescription medication and counseling in the aftermath of the disaster.

The Frew Family

110. Plaintiffs Eric and Audrey Frew purchased their family home in the Pine Street Park neighborhood in 2005. That is where they were living when the Marshall Fire erupted.

111. Like their neighbors, the Frews had little warning about the approaching Marshall Fire. But as the smoke thickened, they evacuated the area to find cleaner air—leaving behind valuables like documents and their pets, because they did not think their home was at risk of burning down. But on their way out of town evacuations were ordered, and they could not return to gather their cats or their valuables. They didn't know whether the cats, or their house, survived.

112. The Frews were more fortunate than some of their nearby neighbors in that their home was not destroyed by the fire, due to the work of firefighters, but it sustained smoke and ash damage inside and outside of the home itself. When they were able to return immediately after the fire, they found their cats cowering under their bed with the smoke alarms still blaring. One cat died prematurely not long after that experience.

113. The family was able to resume living in the home after about three weeks of displacement. But the home smelled of smoke, and ash coated areas like windowsills. In addition to paying to clean the interior and exterior of the house, the family bought a filter system for the whole house to alleviate the poor interior air quality, as well as some smaller portable air filters.

114. Though their home survived, the family has lost their sense of security and has been mourning the trauma that befell their community. They continue to experience trauma from the event. For example, Julia felt panic when she learned of another fire near Boulder, and she avoids shows or other materials about wildfires. And since the fire, they have lived surrounded by destroyed homes, unknown contamination from fire debris, and continuous construction noise and traffic.

The DeBarros Family

115. Robert and Audrey DeBarros have been married for twenty-five years. They owned their home in Louisville, Colorado where they had lived for fifteen years prior to the Marshall Fire. Living with them were their two adult children, Elyse and Nathan, and two family pets.

116. The DeBarros' property was more than just a home. Audrey DeBarros is the Executive Director at a nonprofit called Commuting Solutions and worked remotely from home at the time of the fire. She had her entire office set up inside the house. At the time, Nathan was a senior in high school. Elyse was a sophomore at University of Colorado at Boulder.

117. On December 30, 2021, Robert DeBarros was at work while Audrey, Elyse, Nathan, the cat, and the dog were at home. After receiving a panicked call from Audrey saying they were going to have to evacuate soon, Robert rushed home, and the family and pets got into two vehicles with only a few of their belongings. Nathan was in one car and was directed to flee one way, while the rest of the family in a separate vehicle were directed another way. Fortunately, the family was able to reconnect at a church and from there were able to go to their family friends' house in Longmont.

118. As you can see in the below photographs, the DeBarros' home was completely destroyed. The family's losses included a Nissan Leaf, multiple computers, and other property that they had owned for over fifteen years. When Robert returned to his property, he was only able to find Audrey's wedding ring and a pair of her earrings.





119. Following the fire, the DeBarros family were forced to seek shelter with friends for a few nights before moving into a hotel in Broomfield, CO for the next thirty days. They remain in a rental home while they try to rebuild on the property that once held all of their family memories.

120. Both Robert and Audrey have had many sleepless nights as a result of the fire and their subsequent displacement. In fact, Robert spent so much time dealing with the aftermath of the fire that he had to reduce his workload to a part-time schedule.

The Rupp Family

121. Jenny and Daniel Rupp are homeowners and residents of Boulder County. They purchased their home in July 2014. C.R. was less than a year old when they moved in, and N.R. was born while the family lived there. The house was the family's sanctuary throughout COVID, and the only home their children ever knew.

122. Jenny and Daniel put significant work into their home. They finished a crawlspace with cement, drywall and lighting, they removed popcorn ceilings, they updated kitchen cabinets, they undertook two bathroom renovations, they painted the interior and exterior of the home including painting all of the trim white, they installed a new roof and new air conditioning, and they renovated the back deck. Their yard had a waterfall feature and sprinkler systems, and the Rupps maintained the landscaping.

123. The Rupps had to evacuate on the day of the fire. The Rupps evacuated to a hotel with their cat and Jenny's parents, who lived nearby.

124. The day after the fire, the Rupps returned to the burn site. From a distance, they were able to see that their home and neighborhood were destroyed. They were able to get a few pictures of their destroyed home from the back of the house. A few days later, they were able to go to the location of their home. It was unrecognizable (they drove right past their home initially) and completely destroyed, along with nearly all of their possessions. All of the family heirlooms, photographs, and personal belongings they had gathered over the years were destroyed.



125. The fire has affected every aspect of the Rupps' lives. The fire and its aftermath have taken a toll on their mental and emotional health, and they have struggled with anxiety, sleeplessness, and depression post-fire.

126. Jenny had been working full time at the time of the fire, but she resigned from her position in April 2023 due to the fire's emotional and mental impact, coupled with the time and energy diverted to dealing with the effects of the fire.

127. The Rupps' relationships have suffered, the children lost their place of safety, and the Rupps have lost precious time as a young family building happy, peaceful memories with their children as well as and their sense of security. As of yet, they have not been able to regain these things.

The Logan Family

128. At the time of the Marshall Fire, Michele and Paul Logan and their minor children, N.L. and S.L., were living in their family home with their three children in the Centennial Heights neighborhood of Louisville. Since buying the home in 2013, they had invested in many upgrades: a kitchen renovation, new hardwood flooring and carpets, a bathroom renovation, new fixtures, and more.

129. The Marshall Fire completely destroyed the Logans' family home and all the family's possessions inside, as shown in this photo taken after the fire:



130. The fire also destroyed one of the Logan's cars, a Honda Odyssey Minivan, as well as extensive, mature vegetation including mature aspen, ash, and willow trees.

131. Paul and Michele's loss has been compounded by witnessing their children's loss of home and security. N.L. and S.L. lost the only home they had never known as well of the loss

of their community and sense of security. In addition to losing irreplaceable childhood items—trophies and awards, gifts and letters from deceased family members, and Christmas ornaments they had used year after year—the children have experienced extended displacement and multiple moves as the family has tried to recover and rebuild.

132. While the family was out of town at the time of the fire, they were traumatized by the fire and its aftermath. Both Paul and Michele sought treatment for depression, anxiety and insomnia. And the fire put extreme stress on their entire family. In addition, Michele lost income from her role as a contract attorney for many months after the fire.

133. Since the fire, the family has been displaced and has lived in four different houses in Boulder and Longmont. They still own the property on Mulberry Street, where they have been building a new home that they hope to return to soon.

The Crean Family

134. Tim and Joanna Crean and their two kids moved into their home on Eldorado Lane in Louisville in 2007.

135. The Creans had made major renovations to the home, including finishing the entire basement, including adding a bedroom and full bathroom; completely replacing all interior doors, baseboards, and trim; redoing the hardwood floors; repainting the interior; renovating the kitchen, and completely painting the exterior twice. They had extensive landscaping with a total of approximately twenty mature trees on the property.

136. On the day of the Marshall Fire, the Creans were in the mountains. By the time they drove back to Louisville, their home and all of their possessions were gone. Luckily, a neighbor was able to rescue their two dogs.



137. The toll the Marshall Fire took on the Crean family is hard to describe. The strain on their health, finances, and relationships has been very difficult. Tim had been working full time at the time of the Marshall Fire, but he went to half-time for four months so that he could deal with the aftermath of the fire. The fire also negatively impacted Joanna's work, as she had just started a new position and was unable to fully engage in her new role. Tim's preexisting neurological condition was further stressed by the fire and its aftermath. All four family members have been prescribed antidepressants, anxiety medication, and sleep medicine.

The Whalen Family

138. Before the Marshall Fire, Dan and Rebecca Whalen and their daughter, M.W., and son, C.W., had lived in the Cornerstone neighborhood of Louisville for three years. In that time, they made substantial improvements to the home; for example, new flooring, a remodeled kitchen, and a remodeled bathroom.

139. The morning of the fire was recycling pick-up day, and the strong winds had blown over bins set out in their neighborhood. Late that morning, Rebecca first saw smoke in the distance. Inside the house the children were playing with their new Christmas toys, and Dan was in Grand Junction. By early afternoon the smoke became denser. But there was no notice to evacuate. Nonetheless, some neighbors decided to start packing bags, and Rebecca also started packing a suitcase while trying to reassure her children that everything was okay. She also packed one small bag for them—just their favorite stuffies and enough for a night way.

140. When Rebecca went to put her bag into the car, a neighbor drove by and screamed, “Get out now!” From that point, she rushed to get the kids and the dog into the car and to get out. She had time to grab some extra jackets and text Dan that they were evacuating. By this time, their children were understandably panicked. Traffic was bumper to bumper. She did not know where to go. Fortunately, a neighbor invited them to evacuate to a relative’s townhouse in Commerce City. After they arrived and got the kids situated, Rebecca watched the television coverage as Louisville and Superior burned.

141. The Marshall Fire totally destroyed the family home the Whalens had invested in as well as nearly all the family’s possessions. This photo shows their property shortly after the fire:



142. Their personal property losses include priceless family mementos, like a scroll Rebecca’s father was given by a leader of a region in China where he had helped build roads as

an engineer in the 1940's. Beyond that, the family will no longer have the Christmas tree ornaments the family collected together as the children grew up, the children's childhood drawings, and other irreplaceable items.

143. More than just the loss of four walls, a roof, and their things, however, the fire completely turned the Whalen family's lives upside down. They have been displaced for years, living in an apartment. They have depleted their savings and taken on unexpected debt. Daily, the process of just trying to rebuild—meetings with contractors and permitting agencies, trying to sustain a sense of community—is like another full-time job. There have been many sleepless nights and ongoing stress and anxiety.

144. Perhaps worst is watching how the trauma has impacted their children, who were nine and eleven at the time of the fire.

145. The Whalen family still owns the property in the Cornerstone neighborhood, and they are hopeful that this year, after years of struggle, they may be able to move into a rebuilt home there.

The Quincy & Gurr Family

146. Before the Marshall Fire, Craig Quincy had owned his four-bedroom home in the Cornerstone neighborhood for over fifteen years. He lived there with his daughters, Lucy and P.Q., who were seventeen and fifteen years old at the time of the fire. Stacey Gurr, who is domestic partners with Craig, also lived there part time.

147. Over the years, Craig made significant improvements to the home including a remodeled kitchen and bathrooms, new flooring and new windows. But the Marshall Fire destroyed all of that, as shown in the picture below.



148. On December 30, 2021, the family could see smoke from their property, and Craig alerted their neighbors to leave. There was no evacuation notice given. Once they had relocated to a safe place, they watched the news which was being broadcast in front of their Cornerstone neighborhood and they could see in the background that their home was destroyed. Everyone was in tears watching the coverage.

149. In addition to the damage to the house, the fire destroyed the vegetation around the house and nearly all of the Quincy family's personal possessions. Craig's parents had passed away prior to the Marshall Fire and he had approximately twenty boxes of family history and heirlooms, including an antique gun collection that dated back two generations, all of which was destroyed in the fire.

150. All of Stacey's personal possessions that were in the Quincy home at the time of the fire were destroyed. The Marshall Fire also caused significant smoke and ash damage to Stacey's other residence, leading to significant emotional distress to both Stacey and her son. Their living situation was abruptly altered without prior notice when the Quincy and Gurr households had to combine, transitioning from a decade of just Stacey and her son living together to accommodating an additional three people. As a result, her son was forced to relocate from his room and consequently spent more time at his dad's house changing the balance of her custody.

151. But the fire caused more than just the loss of things, of course. For Craig, the Marshall Fire precipitated one of the worst periods of his life. He struggled with stress, grief, and depression and saw a mental health counselor to help deal with the emotional strife. In addition, the stress caused weight gain and increased blood pressure along with sleepless nights.

152. On top of losing her personal belongings, Lucy Quincy missed a significant amount of school and her grades declined from the previous year, putting her in jeopardy of not graduating. She also suffered from daily anxiety and PTSD symptoms and saw a therapist to address her stress and grief.

153. For P.Q., in addition to losing her personal belongings, the changes to the family's living situation were very difficult for her, including not having her cats available when she was staying with Craig. Losing and grieving her childhood home was extremely difficult for P.Q. and had an impact on an already stressful freshman year of high school. P.Q. still suffers from anxiety and PTSD.

154. Those impacts and the daily struggle to rebuild have impacted the Quincy-Gurr Plaintiffs' lives, jobs, and relationships in countless ways, small and large.

E. Xcel delayed and tampered with the Marshall Fire investigation.

155. It took months of dogged research, but we now know that just minutes after the fire started, an Xcel lineman texted his supervisor to say, "I think our lines may have started this fire east of El Dorado."⁵⁴ If only Xcel had been this candid and forthcoming all along.

156. Knowing that Boulder County's residents would be wondering what sparked the fire and in response to early reports that a downed powerline caused the fire, on December 31, 2021, Boulder County's Office of Emergency Management published the following Tweet: "Update on Cause of Fire: Initial reports were of downed powerlines. @XcelEnergyCO has been a very responsive and invaluable partner & after inspection found no downed powerlines in the ignition area." The information Xcel provided Boulder County for this Tweet later became the subject of further investigation.

157. The same day, Xcel issued a "do not repair" order to preserve the system for investigation. But it appears that Xcel didn't follow its own order to preserve the powerlines at issue.

158. Unbeknownst to investigators and despite the "do not repair" order, it appears that Xcel reattached the east conductor to its insulator and crossarm on January 2, 2022. In so doing, Xcel could have destroyed or interfered with the discovery of direct evidence of the detached line and thereby the fire-cause investigation.

159. Xcel's actions run afoul of the national guidelines set forth in the National Fire Protection Association 921 Guide for Fire and Explosion Investigations ("NFPA 921"), which provide that "every attempt should be made to protect and preserve the fire scene because

⁵⁴ Kovaleski and Vaccarelli, *supra* note 5.

evidence could easily be destroyed or lost in an improperly preserved fire scene.”⁵⁵ NFPA 921 also sets forth numerous ways in which evidence can and should be preserved at the scene.⁵⁶

160. Further, Xcel argued that the term in the Tweet, “downed powerline,” is a technical term referring to a powerline that contacts the ground. Xcel argued that the information in the Tweet was correct because, while the Tweet referred to a downed powerline, the line involved in the Marshall Fire, which is detached from its pole but remains suspended in the air, is technically called a “floater.”

161. But in its Wildfire Mitigation Plan 2022 Annual Report, Defendants stated, “The Company also uses the term ‘Wires-Down’ for a broad scope of events; not just when a wire is physically touching the ground. The events captured also include instances where a wire is displaced from its normal location, whether or not the wire contacts the ground.”⁵⁷

162. After the Boulder County Sheriff’s Office released a report finding Xcel powerlines discharged hot particles that caused the fire that started near Marshall Mesa trailhead, Xcel released a statement that “We strongly disagree with any suggestion that Xcel Energy’s power lines caused the second ignition.” But an investigative report found the opposite: that Xcel ignored the arcing evidence and the repeated operation of the circuit breaker.

163. Ultimately, the Boulder County Sheriff and District Attorney both say Xcel worked to delay the investigation and block investigators.

V. CLAIMS

COUNT ONE — INVERSE CONDEMNATION (AGAINST PUBLIC SERVICE COMPANY OF COLORADO ONLY)

164. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

165. During the relevant time, Plaintiffs were the owners of property or persons claiming an interest in property damaged by Marshall Fire.

166. The Colorado Constitution, Article II, § 15, provides in part: “Private property shall not be taken or damaged, for public or private use, without just compensation,” and, “whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.”

⁵⁵ NFPA 921 17.3.1 (2021).

⁵⁶ See generally NFPA 921 17.3.

⁵⁷ *Wildfire Mitigation Plan 2022 Annual Report* at 20, Xcel Energy (May 31, 2023), https://www.xcelenergy.com/staticfiles/xcel-responsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Mitigation%20Plan%202022%20Annual%20Report_FINAL_05-31-23.pdf.

167. The state grants Xcel the power to condemn by eminent domain pursuant to Colo. Rev. Stat. §38-5-105.

168. Xcel owned, operated, controlled, managed, and/or maintained power line infrastructure in Boulder County, Colorado, for the purpose of providing electricity to the public pursuant to Colo. Rev. Stat. §40-1-103. Providing electricity to the public using power line infrastructure is a public improvement intended to benefit the community as a whole, and it therefore serves a public purpose.

169. Pursuant to this public purpose, Xcel perpetrated a taking of or damage to Plaintiffs' private property. Xcel's failure to adequately maintain and prepare its circuits in the face of a known, foreseeable high-wind event, and failure to de-energize its power lines during the high-wind event caused the Marshall Fire, which burned property owned and/or occupied by Plaintiffs on or around December 30, 2021.

170. Given the risk of a catastrophic fire at the time Xcel started the Marshall Fire, Xcel's taking had the natural consequence of the taking of Plaintiffs' property.

171. Xcel's actions constitute a taking by inverse condemnation of Plaintiffs' private property, without adequate or just compensation or the institution of formal eminent domain or condemnation proceedings.

172. The damage to Plaintiffs is disproportionate to the risks from the public improvements made to benefit the community as a whole. Justice, fairness, and the Colorado Constitution require that Plaintiffs be compensated for their injuries and the taking by Xcel rather than allowing the injuries and taking to remain disproportionately or exclusively concentrated on Plaintiffs.

173. Plaintiffs suffered property losses and other economic losses as well as non-economic losses including stress, depression, and anxiety, among other general damages, resulting from Xcel's inverse condemnation.

COUNT TWO — NEGLIGENCE

174. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

175. Plaintiffs suffered injuries, losses, or damages as described in this Complaint.

176. Xcel was negligent. Specifically, Xcel had duties and responsibilities pursuant to accepted industry standards, Xcel's own standards, National Electric Safety Code standards, the requirements of the American National Standards Institute's utility vegetation management standards, and other state standards. Xcel's duties included, but were not limited to:

A. Apply a level of care corresponding with and proportionate to the danger of designing, engineering, constructing, operating, and maintaining electrical transmission and distribution systems;

B. Operating and maintaining its power line infrastructure in a safe and reasonable manner;

C. Reasonably inspecting its power line infrastructure for hazardous conditions;

D. Exercising the care required of an electric utility company to design, construct, monitor, and maintain high voltage transmission and distribution lines in a manner that would avoid igniting and/or spreading fire during foreseeable and expected dry seasons;

E. Exercising the care required of an electric utility company to design, construct, operate, and maintain high voltage transmission and distribution lines and equipment to withstand foreseeable conditions and avoid igniting and/or spreading fires;

F. Reasonably inspecting, maintaining, and monitoring of high voltage transmission and distribution lines in known fire-prone areas to avoid igniting and/or spreading fires;

G. Reasonably de-energizing power lines during critical and extremely critical fire conditions, when Xcel knew or in the exercise of reasonable care should have known that the then-present fire conditions would cause energized lines to fall or otherwise contact vegetation, structures, and objects;

H. Reasonably de-energizing power lines even after fires had been ignited by their power line infrastructure or other utilities' power line infrastructure;

I. Reasonably implementing policies and procedures, and using equipment, to avoid igniting or spreading fire; and

J. Reasonably adjusting its operations to heed warnings about weather conditions that could cause rapid and dangerous fire growth and spread on or around December 30, 2021.

177. Xcel, through its own actions or inactions or those of its agents or employees, breached its duties as alleged in this Complaint.

178. Xcel's negligence caused or was a substantial factor in causing foreseeable harm to Plaintiffs' property, damages, and other economic losses as well as non-economic losses including stress, depression, and anxiety, among other general damages.

COUNT THREE — TRESPASS TO LAND

179. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

180. Xcel intentionally and wrongfully entered upon Plaintiffs' properties by causing or allowing fire, flames, smoke, embers, ash, odors, gases, and/or airborne particles to physically

come into contact with, enter, damage, destroy, or otherwise trespass on Plaintiffs' property. This intrusion on Plaintiffs' property was unauthorized and not consented to by Plaintiffs, and it caused physical damage to Plaintiffs' properties.

181. Plaintiffs were the owner or had lawful possession of the damaged properties described above.

182. Xcel's action were intentional because Xcel purposefully operated its utility equipment in a dangerous way that in the natural course of events resulted in the entry onto Plaintiffs' properties. Xcel knew of the extreme fire danger that high-wind conditions posed and knew or should have known that there existed critical and extremely critical fire conditions leading up to December 30, 2021. Despite Xcel's knowledge of the risk of extreme fire danger in high-wind conditions, Xcel had no plan in place to shut off power and chose not to de-energize their power lines during the then-present high-wind conditions. Instead, Xcel kept its power lines energized during the critical and extremely critical fire conditions.

183. Xcel knew that the then-present conditions were certain or substantially certain to cause the unauthorized entry and trespass onto Plaintiffs' property and disturb Plaintiffs' possessory interest.

184. As a direct and proximate result of Xcel's conduct, Xcel interfered with Plaintiffs' possessory interests and caused damage to Plaintiffs, including property damage, loss of cherished possessions, economic losses, business losses, emotional distress, annoyance, disturbance, inconvenience, mental anguish, loss of quiet enjoyment of their property, and costs related to evacuation and/or relocation.

185. Plaintiffs have also suffered general damages including, but not limited to, shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress, and other damages to be proven at time of trial.

COUNT FOUR — PRIVATE NUISANCE

186. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

187. Plaintiffs have a possessory interest, including the right to quiet use and enjoyment, in the real property harmed by the fire Xcel caused.

188. Xcel kept powerlines energized and did not adjust the settings for protective equipment during extremely windy and dry conditions, when Xcel knew or in the exercise of reasonable care should have known that the conditions could cause energized powerlines to fall or come into contact with structures, objects, or vegetation and cause sparking, arcing, or emission of burning materials or electricity.

189. Proper inspection and maintenance of infrastructure and equipment, shutting down power, or increasing the sensitivity of protective equipment could have prevented or avoided the harm to Plaintiffs' property. Failure to do so created an unreasonable risk of harm that Xcel's infrastructure and equipment would ignite a fire.

190. Xcel's failure to do so was a failure to exercise reasonable care. Xcel's behavior was negligent and/or intentional.

191. Xcel's conduct unreasonably interfered with the use and enjoyment of Plaintiff's property. Such substantial and unreasonable interference includes, but is not limited to:

- A. Total destruction of Plaintiffs' real and personal property.
- B. Damage to Plaintiffs' real and personal property.
- C. Diminution in the value of Plaintiffs' real and personal property.
- D. Loss of use and ability to enjoy Plaintiffs' real and personal property.
- E. Annoyance and inconvenience.
- F. Loss of wages, earning capacity, and/or business profits or proceeds and/or any related displacement expenses; and
- G. Other noneconomic damages.

192. Xcel's interference was so substantial that it would have been, and was, offensive or caused inconvenience or annoyance to a reasonable person in the community.

193. Xcel's interference was negligent and/or intentional.

194. Xcel's interference with the use and enjoyment of Plaintiffs' property constitutes a private nuisance for which Xcel is liable to Plaintiffs for all resulting damages.

195. As a direct and proximate result of Xcel's conduct, Xcel interfered with Plaintiffs' possessory interests and caused damage to Plaintiffs, including property damage, loss of cherished possessions, economic losses, business losses, emotional distress, annoyance, disturbance, inconvenience, mental anguish, loss of quiet enjoyment of their property, and costs related to evacuation and/or relocation.

196. Plaintiffs have also suffered general damages including, but not limited to, shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress, and other damages to be proven at time of trial.

COUNT FIVE — PUBLIC NUISANCE

197. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

198. Plaintiffs have a possessory interest, including the right to quiet use and enjoyment, in the real property harmed by the fire Xcel caused.

199. Xcel kept powerlines energized and did not adjust the settings for protective equipment during extremely windy and dry conditions, when Xcel knew or in the exercise of

reasonable care should have known that the conditions could cause energized powerlines to fall or come into contact with structures, objects, or vegetation and cause sparking, arcing, or emission of burning materials or electricity.

200. Proper inspection and maintenance of infrastructure and equipment, shutting down power, or increasing the sensitivity of protective equipment could have prevented or avoided the harm to Plaintiffs' property. Failure to do so created an unreasonable risk of harm that Xcel's infrastructure and equipment would ignite a fire.

201. Xcel's failure to do so was a failure to exercise reasonable care. Xcel's behavior was negligent and/or intentional.

202. Xcel's conduct unreasonably interfered with the use and enjoyment of Plaintiff's property. Such substantial and unreasonable interference includes, but is not limited to:

- A. Total destruction of Plaintiffs' real and personal property.
- B. Damage to Plaintiffs' real and personal property.
- C. Diminution in the value of Plaintiffs' real and personal property.
- D. Loss of use and ability to enjoy Plaintiffs' real and personal property.
- E. Annoyance and inconvenience.
- F. Loss of wages, earning capacity, and/or business profits or proceeds and/or any related displacement expenses; and
- G. Other noneconomic damages.

203. Xcel's interference was so substantial that it would have been, and was, offensive or caused inconvenience or annoyance to a reasonable person in the community.

204. Xcel's interference was negligent and/or intentional.

205. Xcel's interference with the use and enjoyment of Plaintiffs' property constitutes a public nuisance for which Xcel is liable to Plaintiffs for all resulting damages.

206. As a direct and proximate result of Xcel's conduct, Xcel interfered with Plaintiffs' possessory interests and caused damage to Plaintiffs, including property damage, loss of cherished possessions, economic losses, business losses, emotional distress, annoyance, disturbance, inconvenience, mental anguish, loss of quiet enjoyment of their property, and costs related to evacuation and/or relocation.

207. Plaintiffs have also suffered general damages including, but not limited to, shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress, and other damages to be proven at time of trial.

COUNT SIX — WILLFUL AND WANTON CONDUCT

208. Plaintiffs restate and incorporate the allegations above as if fully stated herein. Defendant has been designing, engineering, constructing, operating, and maintaining electrical distribution and transmission systems in Colorado for over a century. It has specialized knowledge and expertise in electrical distribution and transmission systems. It also has experience with its equipment and infrastructure starting wildfires.

209. Despite its expertise and knowledge, and despite warnings of extremely high wind and dry conditions and other fire ignitions that day, Xcel did not shut down power or adjust the sensitivity of its protective equipment including a recloser and circuit breaker. In doing so, Xcel consciously disregarded a substantial and unjustifiable risk that its equipment would cause a destructive wildfire that could endanger thousands of people and their homes.

210. As a direct and proximate result of Xcel's conduct, Xcel interfered with Plaintiffs' possessory interests and caused damage to Plaintiffs, including property damage, loss of cherished possessions, economic losses, business losses, emotional distress, annoyance, disturbance, inconvenience, mental anguish, loss of quiet enjoyment of their property, and costs related to evacuation and/or relocation.

COUNT SEVEN — NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

211. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

212. Xcel was negligent as described above.

213. Xcel's negligence created an unreasonable risk of physical harm and caused certain Plaintiffs to fear for their own safety. Many residents were directly in the path of deadly fire and were forced to abandon their homes and belongings. They had to flee in the midst of fire, smoke, and debris, while the fire blocked some ways out of their neighborhoods. The fire and the evacuation both posed risks of physical harm.

214. Plaintiffs' fear had physical consequences and/or resulted in long-continued emotional disturbances. Plaintiffs have experienced continued effects of Defendants' negligence, including but not limited to fear, anxiety, post-traumatic stress disorder, depression, and a diminished capacity to enjoy their day-to-day life.

215. Certain plaintiffs were in the "zone of danger," or personally in the Marshall Fire area.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and against Defendants as follows:

A. An award of damages, including nominal and compensatory damages, as allowed by law and in an amount to be determined;

- B. Plaintiffs may in the future seek exemplary damages by amendment to this Complaint;
- C. An award of attorneys' fees, costs and litigation expenses;
- D. An award of prejudgment interest on all amounts awarded;
- E. An Order for injunctive and declaratory relief; and
- F. Such other and further relief as this Court may deem just and proper.

VII. JURY TRIAL

Plaintiffs demand a trial by jury for all issues so triable.

Dated this 27th day of December, 2023.

Respectfully submitted,

KELLER ROHRBACK L.L.P.

s/ Eric Matteson

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