

1-5-2011

Bollinger v. Fall River Rural Elec. Co-op Clerk's Record Dckt. 38248

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Suzette Y Bollinger vs. Fall River Rural Electric Cooperative, Inc, Bryan Case, Larry Hamilton

Date	Code	User		Judge
1/15/2010	NCOC	MACE	New Case Filed - Other Claims	Gregory W. Moeller
		MACE	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: John Ohman Receipt number: 0065521 Dated: 1/15/2010 Amount: \$88.00 (Check) For: Bollinger, Suzette Y (plaintiff)	Gregory W. Moeller
	NOAP	MACE	Plaintiff: Bollinger, Suzette Y Notice Of Appearance John Ohman	Gregory W. Moeller
	SMIS	MACE	Summons Issued	Gregory W. Moeller
1/21/2010	NOTC	MACE	Notice Of Service-Plaintiffs First Set Of Interog.	Gregory W. Moeller
2/3/2010	AMCO	MACE	Amended Complaint Filed	Gregory W. Moeller
2/16/2010		MACE	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Rgiby Andrus Receipt number: 0066104 Dated: 2/16/2010 Amount: \$58.00 (Check) For: Fall River Rural Electric Cooperative, Inc, (defendant)	Gregory W. Moeller
	NOAP	MACE	Defendant: Fall River Rural Electric Cooperative, Inc, Notice Of Appearance Jerry R. Rigby	Darren B. Simpson
2/17/2010	ORDR	MACE	Order Of Assignment	Gregory W. Moeller
	ORDR	HARRIGFELD	Order of Self-Disqualification Pursuant to I.R.C.P. (40)(d)(4)	Darren B. Simpson
2/19/2010	DISF	MACE	Disqualification Of Judge - Self	Darren B. Simpson
3/11/2010	MOTN	MACE	Motion For Limited Admission	Darren B. Simpson
3/18/2010	NOTC	PARKER	Notice of Service, Request for Admissions; second set of interrogatories and Production of Documents	Darren B. Simpson
3/29/2010	MISC	MACE	Paper Work Sent To Judge Simpson For Signing-Stip	Darren B. Simpson
4/2/2010	STIP	MACE	Stipulation-Proposed Stipulated Protective Order-Filed In Judge Simpson's Chambers 3-31-10	Darren B. Simpson
4/5/2010	MISC	MACE	Deposition Of Suzette Bollinger	Darren B. Simpson
4/16/2010	HRSC	MACE	Hearing Scheduled (Hearing 05/25/2010 02:00 PM) Summary Judgment 1-2 Hours	Darren B. Simpson
4/23/2010	MISC	MACE	Defendants Rule 56 Motion For Summary Judgment	Darren B. Simpson
	NOTC	MACE	Notice Of Hearing On Defendants Rule 56 Motion For Summary Judgment	Darren B. Simpson
	MISC	MACE	Memorandum In Support Of Defendants Rule 56 Motion For Summary Judgment	Darren B. Simpson
	AFFD	MACE	Affidavit Of James M. Barrett Ins Support Of Defendandants Rule 56 Motion For Summary Judgment	Darren B. Simpson
	AFFD	HARRIGFELD	Affidavit of Bryan Case in Support of Defendant's Rule 56(b) Motion for Summary Judgment	Darren B. Simpson
5/5/2010	NOTC	MACE	Notice Vacating And Rescheduling Hearing	Darren B. Simpson

Suzette Y Bollinger vs. Fall River Rural Electric Cooperative, Inc, Bryan Case, Larry Hamilton

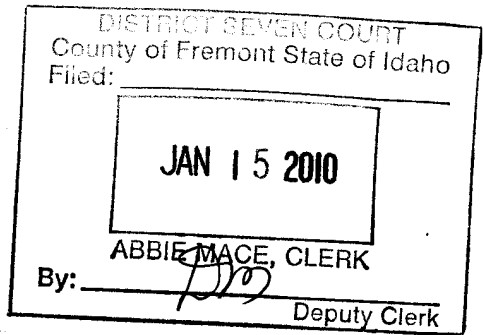
Date	Code	User	Judge
5/6/2010	HRVC	MACE	Hearing result for Hearing held on 05/25/2010 02:00 PM: Hearing Vacated Summary Judgment 1-2 Hours
	HRSC	MACE	Hearing Scheduled (Hearing 05/27/2010 01:00 PM) Motion For Summary Judgment 1-2 Hours
5/14/2010	AFFD	MACE	Affidavit Of Suzette Bolinger In Opposition To Def. Motion For Summary Judgment
	AFFD	MACE	Affidavit Of Authenticity In Support Of Plaintiffs Opposition To Def. Motion For Summary Judgment
	MISC	MACE	Plaintiffs Reply Memorandum In Opposition To Def. Motion For Summary Judgment
5/21/2010	MISC	HARRIGFELD	Patti Bethel called regarding Defendant's Reply in Support of Defendant's Rule 56B Motion for Summary Judgment - Mailed 2nd day air - Zip Code was entered wrong on the package. It is in New Hampshire and will be rerouted.
5/25/2010	MISC	MACE	Reply In Support Of Defendants Rule 56(b) Motion For Summary Judgment
5/27/2010	MINE	HARRIGFELD	Minute Entry Hearing type: Hearing - Motion for Summary Judgment Hearing date: 5/27/2010 Time: 12:57 pm Courtroom: Court reporter: Minutes Clerk: Becky J. Harrigfeld Tape Number: Disk 16 Party: Fall River Rural Electric Cooperative, Inc, Attorney: Jerry Rigby Party: Suzette Bollinger, Attorney: John Ohman
	HRHD	HARRIGFELD	Hearing result for Hearing held on 05/27/2010 01:00 PM: Hearing Held Motion For Summary Judgment 1-2 Hours
7/15/2010	ORDR	MACE	Order Granting Defendant's Motion For Summary Judgment
	JDMT	MACE	Judgment-Suzette Bollinger Claim Against Fall River, Judgment Is Nothing.
7/28/2010	AFFD	MACE	Affidavit Of Gracie Hargraves
	MOTN	MACE	Motion For Reconsideration
	AFFD	MACE	Affidavit Of Helen Kenney
	AFFD	MACE	Affidavit Of Counsel In Support Of Motion For Reconsider
	NOTC	MACE	Notice Of Telephonic Hearing
7/29/2010	MISC	MACE	Exhibit A
	MEMO	HARRIGFELD	Defendant's Memorandum of Costs
	AFFD	HARRIGFELD	Affidavit of James M. Barrett in Support of Defendant's Memorandum of Costs

Suzette Y Bollinger vs. Fall River Rural Electric Cooperative, Inc, Bryan Case, Larry Hamilton

Date	Code	User		Judge
8/4/2010	NOTC	MACE	Notice Of Telephonic Hearing To Be Held In Jeff Co. Aug. 20th Motion To Disallow Costs	Darren B. Simpson
	MOTN	MACE	Motion To Disallow Costs.	Darren B. Simpson
	HRSC	MACE	Hearing Scheduled (Hearing 08/20/2010 10:00 AM) To Be Held In Jeff Co. Motion To Disallow Costs.	Darren B. Simpson
	CSCG	MACE	Case Status Changed: Closed pending clerk action	Darren B. Simpson
8/13/2010	MISC	MACE	Supplemental Affd. Of Bryan Case In Support Of Def. Opposition To Plaintiffs Motion For Reconsideration	Darren B. Simpson
	MISC	MACE	Def Opposition To Plaintiffs Motion For Reconsideration	Darren B. Simpson
	MISC	MACE	Filings Under Seal	Darren B. Simpson
			Document sealed	
10/15/2010	ORDR	MACE	Order Denying Plaintiffs Motion For Reconsideration-Bollinger's Motion For Reconsideration Is Denied	Darren B. Simpson
11/4/2010	NOTC	HARRIGFELD	Notice of Appeal	Darren B. Simpson
		HARRIGFELD	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Cox Ohman Brandstetter Chtd Receipt number: 0071211 Dated: 11/4/2010 Amount: \$101.00 (Check) For: Bollinger, Suzette Y (plaintiff)	Darren B. Simpson
	APLS	HARRIGFELD	Appeal to Supreme Court	Darren B. Simpson
	CSCG	HARRIGFELD	Case Status Changed: Reopened	Darren B. Simpson
11/18/2010	NOTC	HARRIGFELD	Notice of Appeal Filed - Clerk's Record Due 1/18/11	Darren B. Simpson
11/26/2010	MISC	HARRIGFELD	Clerk's Certificate Filed	Darren B. Simpson
11/30/2010	NOTC	MACE	Notice-Amended Notice Of Appeal	Darren B. Simpson
12/9/2010	MISC	HARRIGFELD	Amended Notice of Appeal Received and Due Dates Reset for 2/8/11	Darren B. Simpson
12/10/2010	ORDR	MACE	Order Granting Defendants Request For Costs	Darren B. Simpson
	JDMT	MACE	Judgment-First Amended Judgment-Fall River To Recover Costs Of \$1,042.99	Darren B. Simpson
	CDIS	MACE	Civil Disposition: entered for: Fall River Rural Electric Cooperative, Inc., Defendant; Bollinger, Suzette Y, Plaintiff. Filing date: 12/10/2010	Darren B. Simpson
	CSCG	MACE	Case Status Changed: Closed	Darren B. Simpson
12/13/2010	ORDR	HARRIGFELD	Order Granting Motion for Association of Foreign Counsel - Transmittal from Court of Appeals	Darren B. Simpson
12/15/2010	HRHD	MACE	Hearing result for Hearing held on 08/20/2010 10:00 AM: Hearing Held To Be Held In Jeff Co. Motion To Disallow Costs.	Darren B. Simpson
12/22/2010	MISC	HARRIGFELD	Tranmittal from Idaho Court of Appeals	Darren B. Simpson

Suzette Y Bollinger vs. Fall River Rural Electric Cooperative, Inc, Bryan Case, Larry Hamilton

Date	Code	User		Judge
1/5/2011	MISC	HARRIGFELD	Tranmittal from Idaho Court of Appeals - Clerk's Record and Reporter's Transcript Due 3/8/11	Darren B. Simpson
2/4/2011	TRAN	HARRIGFELD	Transcript Filed - Reporter's Transcript on Appeal	Darren B. Simpson



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Fax: (208) 522-8618
Idaho State Bar #1501

ASSIGNED JUDGE:
GREGORY W. MOELLER

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
Corporation; BRYAN CASE; LARRY
HAMILTON; and DOES 1-5,

Defendants.

Case No. CV-10- 34

**COMPLAINT AND DEMAND
FOR TRIAL BY JURY**

COMES NOW the Plaintiff, by and through her attorney of record, John M. Ohman,
Esq., and complains and alleges against Defendants as follows:

GENERAL ALLEGATIONS

I. PARTIES

COMPLAINT AND DEMAND FOR TRIAL BY JURY - 1

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1. Plaintiff Suzette Bollinger is a resident of the City of Ashton, Fremont County, Idaho and was, at all relevant times, employed by Defendant Fall River Rural Electric Cooperative, Inc. ("Fall River") as a Safety and Facilities Director.

2. Fall River is an Idaho Corporation in the business of providing electrical and utility services to rural residential and commercial customers.

3. Defendant Bryan Case is employed by Fall River as its general manager.

4. Defendant Larry Hamilton is employed by Fall River as its operations manager.

5. Does, who are presently unknown but may be liable to Plaintiff, are employees of Fall River.

6. By the doctrine of *respondent superior* Fall River is responsible, vicariously, for the actions of the individual Defendants.

II. FACTS

7. Plaintiff was hired by Defendant Fall River on October 20, 1988, and in the following years received many advancements, promotions, and pay raises based upon her exemplary job performance.

8. While employed by Fall River and at the time of her termination, Plaintiff's primary responsibilities included oversight of safety hazards and procedures and assuring compliance with statutes relating to the Occupational Safety and Health Administration, the Environmental Protection Agency, and other rules and regulations. At all times she performed these and other duties in an exemplary fashion, devoting her best efforts on Fall River's behalf.

9. When Defendant Fall River hired Plaintiff, the parties executed an employment agreement that remains in force.

COMPLAINT AND DEMAND FOR TRIAL BY JURY - 2

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10. Defendant Fall River has a policy in place whereby those employees with more seniority are to be given a higher priority for “promotions, demotions, transfers, lay-offs, and recalls,” so long as merit, skill, ability, fitness, and efficiency are equal.

11. At the time of her termination, Plaintiff’s seniority status was ignored, and Defendant Fall River breached it’s seniority policy

12. On July 28, 2009, after almost 21 years of devoted service to Defendant Fall River, Plaintiff was terminated without any prior notice or cause, effective immediately.

III. CLAIMS FOR RELIEF

BREACH OF EXPRESS AND IMPLIED CONTRACT, RETALIATORY DISCHARGE, AND WRONGFUL TERMINATION

13. Defendants breached the express agreement of employment when they terminated Plaintiff, effective immediately, without cause and without notice.

14. Defendants’ actions constitute a breach of contract, implied, that Plaintiff would be secure in her employment with Fall River so long as she performed in accordance with her job requirements. Notwithstanding that she did so, Defendants breached the employment agreement.

15. Defendants acted in contravention of public policy by wrongfully terminating Plaintiff after she repeatedly expressed concerns over various serious safety issues, most of which were explicitly governed by statute, rule, or regulation.

16. Defendants breached the implied covenant of good faith and fair dealing when terminating Plaintiff, effective immediately without cause or notice, after Plaintiff worked diligently for Defendant Fall River for almost 21 years.

17. Defendants’ actions were retaliatory towards Plaintiff because she repeatedly

expressed safety concerns, and was prepared to report Defendants to authorities for their chronic safety violations and for their lack of action to correct the same.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

18. Defendants owed Plaintiff a duty of good faith and fair dealing.

19. Defendants breached the duty owed to Plaintiff by terminating Plaintiff, effective immediately, without cause or notice, after Plaintiff's 21 years of satisfactory service and an enforceable employment agreement between the parties.

20. The conduct of Defendants has caused Plaintiff to suffer from post-traumatic stress, depression, anxiety, insomnia, and irritability.

21. Plaintiff has suffered economic and non-economic damages as a result of the conduct of Defendants, the exact amount of which will be proven at trial.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

22. Defendants acted intentionally and recklessly when they terminated Plaintiff effective immediately without cause or notice.

23. By terminating Plaintiff effective immediately, giving Plaintiff 30 minutes to "pack up [her] office," Defendants' conduct was extreme and outrageous, and caused Plaintiff to be traumatized.

24. Plaintiff has since sought counseling and therapy, and has suffered severe emotional distress because of the conduct of the Defendants.

DAMAGES

25. By reason of all of the actions hereinbefore complained of, Defendants, jointly and severally, have caused damages to Plaintiff in an amount in excess of \$10,000.00, the exact

COMPLAINT AND DEMAND FOR TRIAL BY JURY - 4

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amount of which will be proven at the time of trial.

26. Said damages are both economic and non-economic, and include but are not limited to:

- A. Loss of earnings and employment benefits, to date, and to be experienced indefinitely into the future; and,
- B. Emotional stress and mental anguish because of the humiliation, physical and emotional distress, embarrassment, and depression, experienced to date, and reasonably expected to continue into the future.

27. Plaintiff is entitled to recover her reasonable attorneys fees and costs incurred herein pursuant to §§ 12-120 and 12-121, I.C., IRCP 54, and otherwise allowed by contract or by law.

RESERVATION

Plaintiff hereby reserves the right to amend this Complaint, upon motion, pursuant to § 6-1604 I.C., to seek punitive damages.

WHEREFORE, Plaintiff requests judgment against Defendants, and each of them, jointly and severally, under the theories espoused herein, or any of them, for such damages in excess of \$10,000.00, as are proven by the evidence at the time of trial, together with her reasonable attorneys fees and costs.

COMPLAINT AND DEMAND FOR TRIAL BY JURY - 5

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PLAINTIFF REQUESTS TRIAL BY JURY HEREIN.

DATED This 12 day of January, 2010.



JOHN M. OHMAN, ESQ.



SUZETTE BOLLINGER, Plaintiff

VERIFICATION

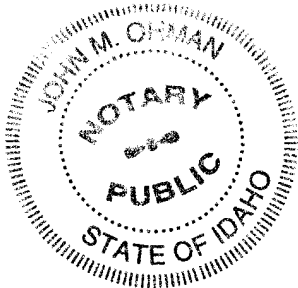
STATE OF IDAHO)
)
County of Bernville)

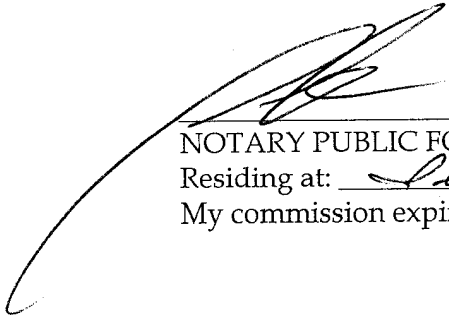
SUZETTE BOLLINGER, affirms that she is the person who executed the foregoing instrument; she has read the same and knows the contents thereof; and the matters stated therein are true to the best of her knowledge.



SUZETTE BOLLINGER

SUBSCRIBED AND SWORN to before me this 12 day of January, 2010.





NOTARY PUBLIC FOR IDAHO
Residing at: Lulu Falls
My commission expires: 1

COMPLAINT AND DEMAND FOR TRIAL BY JURY - 6

S:\MICK\Clients\Bollinger,Suzette\Complaint.wpd

DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed:

JAN 15 2010

By: *Am*
 ABBIE MACE, CLERK
 Deputy Clerk

JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Idaho State Bar #1501

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
 COOPERATIVE, INC., an Idaho
 Corporation; BRYAN CASE; LARRY
 HAMILTON; and DOES 1-5,

Defendants.

Case No. CV-10- 36

SUMMONS

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF. THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO: FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.; BRYAN CASE; and LARRY HAMILTON

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated Court within 20 days after service of this

SUMMONS - 1

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Summons on you. If you fail to so respond, the Court may enter judgment against you as demanded by the Plaintiff in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and shall also include:

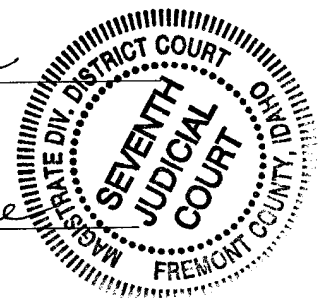
1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named Court.

DATED This 15 day of January, 2010.

Abbe Mace
CLERK

Deborah Mace
DEPUTY



SUMMONS - 2

S:\MICK\clients\Bollinger, Suzette\Summons.wpd

**JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
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IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Idaho State Bar #1501**

DISTRICT SEVEN COURT
County of Fremont State of Idaho
Filed:
JAN 21 2010
By: DM **ABBIE MACE, CLERK**
Deputy Clerk

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
Corporation; BRYAN CASE; LARRY
HAMILTON; and DOES 1-5,

Defendants.

Case No. CV-10-36

NOTICE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 19 day of January, 2010, I caused a true and correct copy of **PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANTS** to be served upon the following person at the address below his name either by depositing said document in

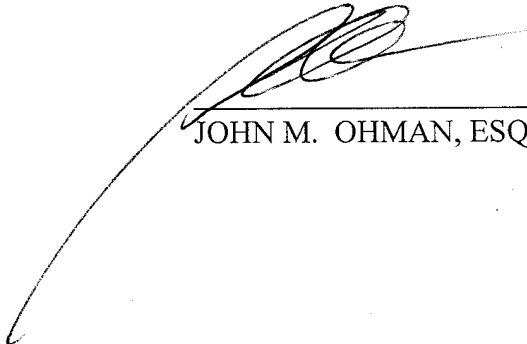
NOTICE OF SERVICE - 1

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the United States mail with the correct postage thereon or by hand delivering or by transmitting as set forth below:

Jathan Janove, Esq.
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-2785
Fax: (503) 226-0079

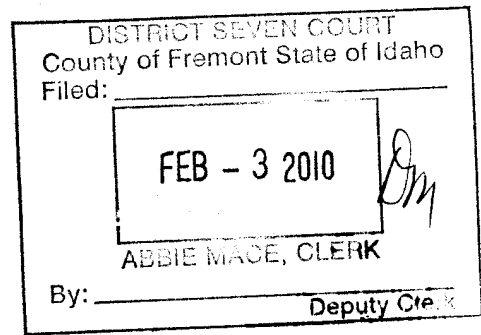
- By pre-paid post
- By hand delivery
- By facsimile transmission
- By courthouse box
- By electronic transmission



JOHN M. OHMAN, ESQ.

NOTICE OF SERVICE - 2

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Fax: (208) 522-8618
Idaho State Bar #1501

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
Corporation,

Defendant.

Case No. CV-10-36

**AMENDED COMPLAINT AND
DEMAND FOR TRIAL BY JURY**

COMES NOW the Plaintiff, by and through her attorney of record, John M. Ohman,
Esq., and complains and alleges against Defendant as follows:

GENERAL ALLEGATIONS

I. PARTIES

1. Plaintiff Suzette Bollinger is a resident of the City of Ashton, Fremont County,

AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY - 1

S:\MICK\Clients\Bollinger.Suzette\Amended Complaint.wpd

Idaho and was, at all relevant times, employed by Defendant Fall River Rural Electric Cooperative, Inc. ("Fall River") as a Safety and Facilities Director.

2. Fall River is an Idaho Corporation in the business of providing electrical and utility services to rural residential and commercial customers.

3. By the doctrine of *respondeat superior* Fall River is responsible, vicariously, for the actions of its agents and employees.

II. FACTS

4. Plaintiff was hired by Defendant Fall River on October 20, 1988, and in the following years received many advancements, promotions, and pay raises based upon her exemplary job performance.

5. While employed by Fall River and at the time of her termination, Plaintiff's primary responsibilities included oversight of safety hazards and procedures and assuring compliance with statutes relating to the Occupational Safety and Health Administration, the Environmental Protection Agency, and other rules and regulations. At all times she performed these and other duties in an exemplary fashion, devoting her best efforts on Fall River's behalf.

6. When Defendant Fall River hired Plaintiff, the parties executed an employment agreement that remains in force.

7. Defendant Fall River has a policy in place whereby those employees with more seniority are to be given a higher priority for "promotions, demotions, transfers, lay-offs, and recalls," so long as merit, skill, ability, fitness, and efficiency are equal.

8. At the time of her termination, Plaintiff's seniority status was ignored, and Defendant Fall River breached its seniority policy

AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY - 2

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9. On July 28, 2009, after almost 21 years of devoted service to Defendant Fall River, Plaintiff was terminated without any prior notice or cause, effective immediately.

III. CLAIMS FOR RELIEF

BREACH OF EXPRESS AND IMPLIED CONTRACT, RETALIATORY DISCHARGE, AND WRONGFUL TERMINATION

10. Defendant breached the express agreement of employment when it terminated Plaintiff, effective immediately, without cause and without notice.

11. Defendant's actions constitute a breach of contract, implied, that Plaintiff would be secure in her employment with Fall River so long as she performed in accordance with her job requirements. Notwithstanding that she did so, Defendant breached the employment agreement.

12. Defendant acted in contravention of public policy by wrongfully terminating Plaintiff after she repeatedly expressed concerns over various serious safety issues, most of which were explicitly governed by statute, rule, or regulation.

13. Defendant breached the implied covenant of good faith and fair dealing when terminating Plaintiff, effective immediately without cause or notice, after Plaintiff worked diligently for Defendant Fall River for almost 21 years.

14. Defendant's actions were retaliatory towards Plaintiff because she repeatedly expressed safety concerns, and was prepared to report Defendant to authorities for its chronic safety violations and for its lack of action to correct the same.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

15. Defendant owed Plaintiff a duty of good faith and fair dealing.

16. Defendant breached the duty owed to Plaintiff by terminating Plaintiff, effective

AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY - 3

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immediately, without cause or notice, after Plaintiff's 21 years of satisfactory service and an enforceable employment agreement between the parties.

17. The conduct of Defendant has caused Plaintiff to suffer from post-traumatic stress, depression, anxiety, insomnia, and irritability.

18. Plaintiff has suffered economic and non-economic damages as a result of the conduct of Defendant, the exact amount of which will be proven at trial.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

19. Defendant acted intentionally and recklessly when it terminated Plaintiff effective immediately without cause or notice.

20. By terminating Plaintiff effective immediately, giving Plaintiff 30 minutes to "pack up [her] office," Defendant's conduct was extreme and outrageous, and caused Plaintiff to be traumatized.

21. Plaintiff has since sought counseling and therapy, and has suffered severe emotional distress because of the conduct of the Defendant.

DAMAGES

22. By reason of all of the actions hereinbefore complained of, Defendant has caused damages to Plaintiff in an amount in excess of \$10,000.00, the exact amount of which will be proven at the time of trial.

23. Said damages are both economic and non-economic, and include but are not limited to:

- A. Loss of earnings and employment benefits, to date, and to be experienced indefinitely into the future; and,

AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY - 4

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B. Emotional stress and mental anguish because of the humiliation, physical and emotional distress, embarrassment, and depression, experienced to date, and reasonably expected to continue into the future.

24. Plaintiff is entitled to recover her reasonable attorneys fees and costs incurred herein pursuant to §§ 12-120 and 12-121, I.C., IRCP 54, and otherwise allowed by contract or by law.

RESERVATION

Plaintiff hereby reserves the right to amend this Complaint, upon motion, pursuant to § 6-1604 I.C., to seek punitive damages.

WHEREFORE, Plaintiff requests judgment against Defendant under the theories espoused herein, or any of them, for such damages in excess of \$10,000.00, as are proven by the evidence at the time of trial, together with her reasonable attorneys fees and costs.

PLAINTIFF REQUESTS TRIAL BY JURY HEREIN.

DATED This 2 day of February, 2010.



JOHN M. OHMAN, ESQ.

AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY - 5

S:\MICK\Clients\Bollinger.Suzette\Amended Complaint.wpd

Jerry R. Rigby
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Jathan Janove
Email: jj@aterwynne.com
James M. Barrett (*pro hac vice application pending*)
Email: jmb@aterwynne.com
ATER WYNNE LLP
1331 N.W. Lovejoy Street, Suite 900
Portland, OR 97209-3280
(503) 226-1191
ISB No. 6969

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho corporation,

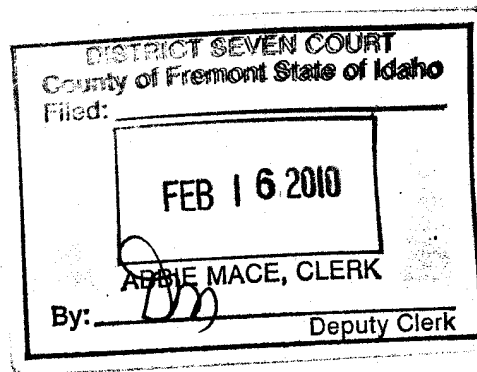
Defendant.

Case No. CV-10-36

**DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES TO
AMENDED COMPLAINT**

FEE CATEGORY: I.1.

FEE: \$58.00



DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES - Page 1

DOCUMENT
SCANNED

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

872792/1/SF/103889-0003

For its answer to the Amended Complaint of Plaintiff Suzette Bollinger (“Plaintiff”), Defendant Fall River Rural Electric Cooperative, Inc. (“Defendant”) admits, denies, and alleges as follows:

1. Defendant admits the allegations in paragraph 1.
2. Defendant admits the allegations in paragraph 2.
3. Defendant denies paragraph 3 of the Amended Complaint on the basis that it purports to assert conclusions of law to which no response is required.
4. Defendant admits that it hired Plaintiff on October 20, 1988, but denies the remaining allegations of paragraph 4.
5. Defendant admits that from February 26, 2008 until time of her termination, Plaintiff’s responsibilities included safety, loss control and facilities. Defendant denies the remaining allegations of paragraph 5.
6. Defendant denies the allegations in paragraph 6.
7. Defendant admits that it had a general policy that reads: “When in the fair and impartial judgment of the management of the Cooperative, skill, merit, ability, fitness and efficiency are equal, seniority with the Cooperative shall govern in making promotions, demotions, transfers, lay-offs and recalls.” Defendant denies the remaining allegations of paragraph 7.
8. Defendant denies the allegations in paragraph 8.
9. Defendant admits that Plaintiff’s employment was terminated on July 28, 2009, and denies the remaining allegations of paragraph 9.
10. Defendant denies the allegations in paragraph 10.

DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES - Page 2

11. Defendant denies the allegations in paragraph 11.
12. Defendant denies the allegations in paragraph 12.
13. Defendant denies the allegations in paragraph 13.
14. Defendant denies the allegations in paragraph 14.
15. Defendant denies paragraph 15 of the Amended Complaint on the basis that paragraph 15 purports to assert conclusions of law to which no response is required.

16. Defendant denies the allegations in paragraph 16.
17. Defendant denies the allegations in paragraph 17.
18. Defendant denies the allegations in paragraph 18.
19. Defendant denies the allegations in paragraph 19.
20. Defendant denies the allegations in paragraph 20.
21. Defendant denies the allegations in paragraph 21.
22. Defendant denies the allegations in paragraph 22.
23. Defendant denies the allegations in paragraph 23.
24. Defendant denies the allegations in paragraph 24.

AFFIRMATIVE DEFENSES

25. Plaintiff fails to state a claim upon which relief may be granted.
26. Plaintiff's employment was at-will, and Defendant had the right to terminate her at any time for any reason or no reason.
27. Plaintiff failed to mitigate her damages, if any.
28. Plaintiff expressly or impliedly waived all claims arising from the allegations in the Amended Complaint.

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES - Page 3

29. Plaintiff is estopped from asserting all claims arising from the allegations in the Amended Complaint by reason of her acts, omissions, and course of conduct.

30. Plaintiff's claims are barred, in whole or in part, by the doctrines of ratification, acquiescence, consent, and agreement.

31. Plaintiff's claims are barred, in whole or in part, because the applicable statute of limitations has expired.

32. Plaintiff's claims are barred, in whole or in part because of Defendant's exclusive liability under Idaho's Workers' Compensation Law, I.C. 72-209.

33. Defendant hereby gives notice that it intends to rely upon any additional affirmative defenses that become available or apparent during discovery and thus reserves the right to amend its Answer and Affirmative Defenses to assert such additional defenses.

WHEREFORE, Defendant respectfully requests judgment as follows:

1. That Plaintiff's complaint be dismissed with prejudice and that Plaintiff take nothing;
2. For Defendant's attorney fees, costs and disbursements incurred herein; and
3. For such further equitable relief as the Court deems proper.

DATED this 12 day of February, 2010.

ATER WYNNE LLP

By: 

Jathan Janove, ISB #6969
Attorneys for Defendants

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES - Page 4

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

872792/1/SF/103889-0003

CERTIFICATE OF SERVICE

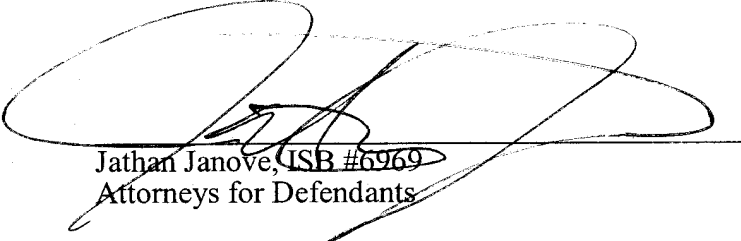
I hereby certify that I served the foregoing **DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO AMENDED COMPLAINT** on the following:

John M. Ohman
cobjmo@ida.net
Cox, Ohman & Brandstetter, Chartered
510 "D" Street
Idaho Falls, ID 83405-1600

Attorney for Plaintiff

by mailing; hand delivery; facsimile a true and correct copy thereof to said parties on the date stated below.

DATED this 12 day of February, 2010.



Jathan Janove, ~~ISB #6969~~
Attorneys for Defendants

CERTIFICATE OF SERVICE

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

872792/1/SF/103889-0003

DISTRICT SEVEN COURT
County of Fremont State of Idaho
Filed: _____
FEB 17 2010
ABBIE MASE CLERK
By: *Em* Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR FREMONT COUNTY

CASE NO: CV-2010-36

SUZETTE BOLLINGER

Plaintiff,

Vs

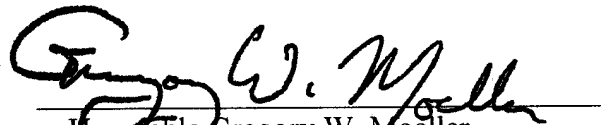
FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC.

Defendants

ORDER OF
SELF-DISQUALIFICATION
PURSUANT TO I.R.C.P 40(d)(4)

IT IS HEREBY ORDERED that the undersigned District Judge deems himself disqualified from further proceedings in the above-entitled matter with cause being he was previously part of the law firm representing the defendant in this case, and the case is transferred to BURTON BUTLER, for reassignment.

Dated this 17th day of February, 2010.


Honorable Gregory W. Moeller
District Judge

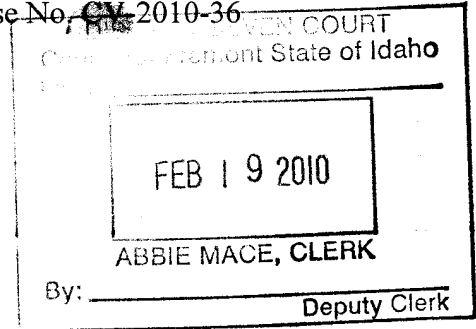
Copy Emailed to Burton Butler 2/17/10 for reassignment

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF **FREMONT**

SUZETTE BOLLINGER,)
)
Plaintiff,)
)
vs.)
)
FALL RIVER RURAL ELECTRIC,)
COOPREATIVE, INC.,)
)
Defendant.)
_____)

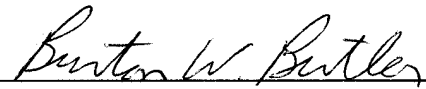
ORDER OF ASSIGNMENT

Case No. ~~CY~~ 2010-36



IT IS HEREBY ORDERED that the above-entitled case is referred to the Honorable
Darren B. Simpson, District Judge for further proceedings.

DONE AND DATED February 17, 2010.

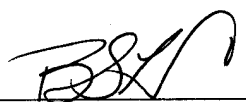


Burton W. Butler
Trial Court Administrator

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Order of Assignment was personally delivered, by hand delivery to the Bonneville County Courthouse Box, sent by facsimile or mailed by first class mail with prepaid postage as indicated below on February 17, 2010:

Clerk of Court, Fremont County Courthouse - mailed
Hon. Darren B. Simpson, District Judge, Bingham County Courthouse - mailed
FREMONT County deputy clerks to distribute copies to all parties or attorneys of record and/or parties at issue that are not listed on the Certificate of Service.



Administrative Assistant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That I am a duly certified clerk and that on this, 22 day of Feb., 2010, I served a true and correct copy of the foregoing by depositing same in the United States mail, postage prepaid, or as otherwise indicated to:

John M. Ohman
Attorney At Law
510 "D" Street
P.O Box 51600
Idaho Falls, Id. 83405-1600

X Mailed

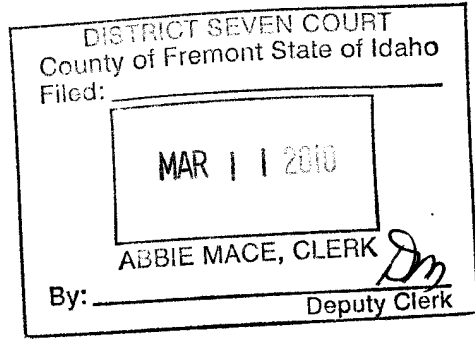
Jerry R. Rigby
Attorney At Law
25 N. 2nd. E.
P.O Box 250
Rexburg, Id. 83440

X Mailed

Abbie Macg-Clerk Of The District Court

BY Deborah Mau
Deputy Clerk

Jerry R. Rigby (Idaho Bar No. 2470)
 RIGBY, ANDRUS & RIGBY
 Attorneys for Defendant
 25 North Second East
 P.O. Box 250
 Rexburg, Idaho 83440
 Telephone: (208) 356-3633



James M. Barrett (Oregon Bar No. 011991)
 ATER WYNNE, LLP
 1331 NW Lovejoy Street, Ste. 900
 Portland, OR 97209
 Telephone: (503) 226-1191

Attorneys for Fall River Rural Electric Cooperative, Inc.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO IN AND FOR THE COUNTY OF FREMONT**

SUZETTE BOLLINGER,)	Case No. CV-10-36
)	
Plaintiffs,)	
)	
v.)	MOTION FOR LIMITED
)	ADMISSION
FALL RIVER RURAL ELECTRIC)	
COOPERATIVE, INC., an Idaho Corporation.)	
)	
Defendant.)	
)	

The undersigned Jerry R. Rigby petitions the court for admission of the undersigned James M. Barrett, pursuant to Idaho Bar Commission Rule 222, for the purpose of the above-captioned matter.

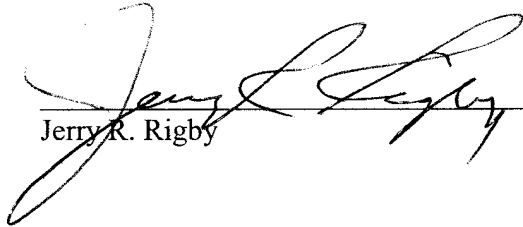
James M. Barrett certifies that he is an active member, in good standing, of the bar of

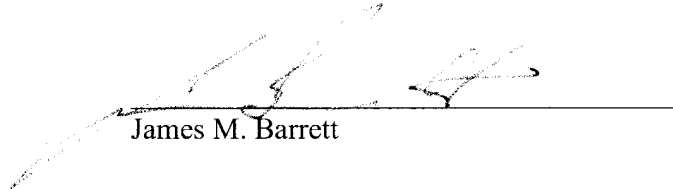
Oregon, that he maintains the regular practice of law at the above-noted address, and that he is not a resident of the State of Idaho or licensed to practice in Idaho. James M. Barrett certifies he has not previously been admitted under IBCR 222.

Jerry R. Rigby and James M. Barrett certify that a copy of this motion has been served on all other parties to this matter and that a copy of the motion, accompanied by a \$200 fee, has been provided to the Idaho State Bar.

Jerry R. Rigby certifies that the above information is true to the best of his knowledge, after reasonable investigation. Jerry R. Rigby acknowledges that his attendance shall be required at all court proceedings in which James M. Barrett appears, unless specifically excused by the trial judge.

Dated this 9th day of March, 2010.


Jerry R. Rigby


James M. Barrett

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 10th day of March, 2010, a true and accurate copy of the foregoing was sent by U.S. Mail postage pre-paid and addressed to the following:

John M. Ohman
Cox, Ohman & Brandstetter, Chtd.
P.O. Box 51600
Idaho Falls, ID 83405


Jerry R. Rigby

**JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Idaho State Bar #1501**

DISTRICT SEVEN COURT	
County of Fremont State of Idaho	
Filed:	_____
MAR 18 2010	
ABBIE MACE, CLERK	
By: _____	Deputy Clerk

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
Corporation; BRYAN CASE; LARRY
HAMILTON; and DOES 1-5,

Defendants.

Case No. CV-10-36

**NOTICE OF SERVICE:
REQUEST FOR ADMISSIONS; SECOND
SET OF INTERROGATORIES AND
PRODUCTION OF DOCUMENTS**

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 18 day of March, 2010, I caused a true and correct copy of **PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS; AND SECOND SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS** to be served upon the following person at the address below his name either by

NOTICE OF SERVICE - 1

S:\MICK\clients\Bollinger, Suzette\Notice of Service req admis-inter-doc.wpd

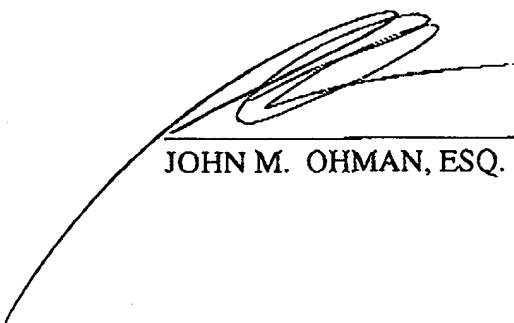
ORIGINAL

depositing said document in the United States mail with the correct postage thereon or by hand

delivering or by transmitting as set forth below:

James M. Barrett, Esq.
Jathan Janove, Esq.
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-2785
Fax: (503) 226-0079

- By pre-paid post
 - By hand delivery
 - By facsimile transmission
 - By courthouse box
 - By electronic transmission
- jmb@aterwynne.com



JOHN M. OHMAN, ESQ.

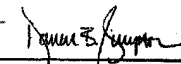
NOTICE OF SERVICE - 2

S:\MICK\Clients\Bollinger, Suzette\Notice of Service req admis-inter.doc.wpd

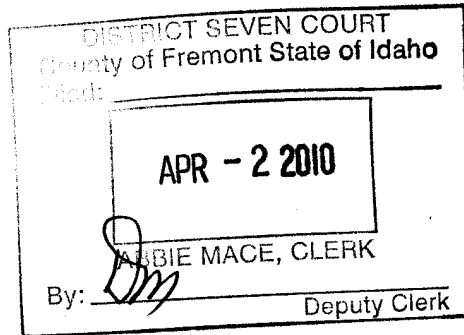
FILED IN CHAMBERS AT BLACKFOOT,
BINGHAM COUNTY, IDAHO _____

March 31, 2010

AT 2:45 pm


DARREN B. SIMPSON
DISTRICT JUDGE

Jerry R. Rigby
Email: jrigby@rex-law.com
RIGBY, ANDRUS & RIGBY, CHTD.
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440
(208) 356-3633
ISB No. 2470



Jathan Janove
Email: jj@aterwynne.com
James M. Barrett (*Pro Hac Vice application pending*)
Email: jmb@aterwynne.com
ATER WYNNE LLP
1331 N.W. Lovejoy Street, Suite 900
Portland, OR 97209-3280
(503) 226-1191
ISB No. 6969

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho corporation,

Defendants.

Case No. CV-10-36

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

STIPULATION

The parties, through their undersigned counsel, stipulate and agree as follows:

The parties anticipate that they may produce trade secrets or confidential, proprietary or commercially sensitive information (“Confidential Information”) during discovery in this case. The type of Confidential Information that may be produced under this protective order includes private internal company documents, client information, and confidential sales, cost and revenue information. Plaintiff and defendant agree to maintain the confidentiality of this and other Confidential Information, and not to distribute or otherwise communicate such Confidential Information to any person outside of this lawsuit, except as permitted herein. The parties further agree that to the extent that Confidential Information may be redacted so that a document need not be filed under seal, the parties will endeavor to do so. Accordingly, based upon the stipulation of the parties, upon consideration of the record and pursuant to the provisions of Rule 26(c) of the Idaho Rules of Civil Procedure,

IT IS HEREBY ORDERED as follows:

Any party to this action or third party witness may designate information produced as “CONFIDENTIAL” material and/or information at or prior to the time of production of the material or the giving of testimony or other information in this action. By such designation the designating party and its attorneys certify in good faith that to the best of their knowledge, information and belief, formed after an inquiry reasonable under the circumstances, there is good cause for such designation and such designation is in accordance with the terms of this Stipulation and Protective Order and the policies and Rules of this Court.

1. Definition of Confidential Information. “Confidential Information” is information that has not been made public, and which the designating party considers in good faith to contain information involving trade secrets, sensitive business or financial information, confidential research, development or commercial information, or private personal information, and which has been designated as “CONFIDENTIAL.”

2. Scope. This Protective Order shall govern discovery in this action and shall be applicable to all information provided, produced or obtained, whether formally or informally, in the course of discovery in this action, including, without limitation, information provided, produced or obtained in or through any deposition, response to interrogatories, response to a request for admission, and any document or thing provided or made available for inspection and/or copying (collectively “document, thing or testimony”). As used herein, the term “document” shall include all forms of information delineated in Rule 34 of the Idaho Rules of Civil Procedure.

3. Designation of Confidential Information. Any person or entity, whether a party or a nonparty, and whether acting on its own or through counsel (hereafter “person”), which is participating in discovery in this action may designate any document, thing or testimony as Confidential Information so long as such person has a good faith, reasonable belief that such document, thing or testimony contains or discloses, respectively, information justifying a designation of Confidential Information (as stated in paragraph 1). The parties to this Order, including anyone who agrees to be bound by the Order, agree to designate information as Confidential on a good faith basis and not for purposes of harassing the receiving party or for purposes of unnecessarily restricting the receiving party’s access to information concerning the lawsuit.

4. The Court. This action is currently pending in the District Court of the Seventh Judicial District of the State of Idaho (“the Court”).

5. Procedure for Designating Documents. Any person desiring to subject the information contained or disclosed in any document (including, without limitation, any document responsive to a Rule 34 request or to a Rule 45 subpoena, and any responses to interrogatories or to requests for admission) delivered to or served on any party to the confidentiality provisions of this Protective Order must designate such document as Confidential Information in the manner provided herein, unless the parties agree to an alternative procedure.

Any document delivered to or served on any party may be designated as Confidential Information by affixing the legend "CONFIDENTIAL" to every page of the document. All correspondence, legal memoranda, motion papers, pleadings and other written material which quote or refer to the substance of any Confidential Information shall also be treated as such in accordance with the provisions of this Protective Order, and the portion of such documents containing, quoting or referring to the substance of any Confidential Information shall be marked in accordance with this paragraph.

6. Procedure for Designating Physical Specimens or Non-Written Material. A physical specimen or thing containing Confidential Information shall be designated as such by marking or tagging such physical specimen or thing with the legend "CONFIDENTIAL." Likewise, Confidential, Non-Written Material, such as electronic media, software, or source code, shall be designated as such by marking or tagging the disc or physical medium containing the material.

7. Procedure for Designating Inspections. If a person believes that inspection or photographing of that person's processes, products, equipment, premises or other property pursuant to Rule 34 will reveal or disclose information that is in good faith deemed Confidential Information, that person shall advise in advance the party or parties seeking such discovery that the inspection or photographing will be permitted only on a confidential basis, and that the material discovered, and any information derived from that material, shall be treated as "CONFIDENTIAL". If the person providing the discovery fails to advise in advance the party or parties seeking discovery that any inspection or photographing will be permitted only on a confidential basis, any confidentiality is waived unless otherwise stipulated or ordered.

8. Inadvertent Failure to Designate. If a party, through inadvertence, produces any Confidential Information without labeling or marking or otherwise designating it as such in accordance with the provisions of this Protective Order, the designating party may give written notice to the receiving party that the document or thing produced is deemed Confidential

Information, and should be treated as such in accordance with the provisions of this Protective Order. The receiving party must treat such documents and things as Confidential Information from the date such notice is received. Disclosure, prior to the receipt of such notice, of such Confidential Information to persons not authorized to receive Confidential Information shall not be deemed a violation of this Protective Order; provided, however, that the party making such disclosure shall notify the other party in writing of all such unauthorized persons to whom such disclosure was made and shall use best efforts to secure the return of all such Confidential Information disclosed. The inadvertent disclosure of Confidential Information by a producing party without designation at the time of disclosure shall not be treated as a waiver of the confidentiality of the subject matter.

9. Procedure for Designating Deposition Testimony. Deposition testimony may be designated, in whole or in part, as Confidential Information by oral designation on the record, in which case the person making the designation shall instruct the Court Reporter to separately bind the portions of the deposition transcript that have been designated "CONFIDENTIAL", and stamp the designation, as appropriate, on each page. Additionally, each party shall have twenty (20) days after receipt of the transcript of any deposition (as certified by the Court Reporter) within which to notify the other party in writing of the portions of the transcript that it wishes to designate as Confidential Information. Prior to the expiration of such twenty (20) day period, all information disclosed during a deposition shall be treated as though designated "CONFIDENTIAL", unless otherwise agreed by the parties and the witness, or ordered by the Court. Upon being informed that certain portions of a deposition are designated "CONFIDENTIAL", each party must cause each copy in their custody or control to be so marked immediately.

10. Restrictions on Use and Disclosure of Confidential Information. All Confidential Information obtained on behalf of a party from any person through discovery in this proceeding, and any summaries, abstracts, or indices thereof, shall be used by the persons who receive such

information (“Recipients”) solely for the preparation and trial of this proceeding through appeal and for no other purpose whatsoever. Unless otherwise authorized by the designating person ordered by the Court, Recipients shall not make Confidential Information public, shall not use Confidential Information in any civil action or other proceeding or in any other way, and shall not disclose or divulge Confidential Information to anyone except as permitted in this Protective Order.

11. Permitted Disclosure of Confidential Information. Except as otherwise provided by this Protective Order, information designated as CONFIDENTIAL shall be disclosed only to:

(a) Outside counsel of record for the parties in this action, and other attorneys, clerical, paralegal and other staff employed by such outside counsel;

(b) Consultants, investigators, or experts retained by a party for the prosecution or defense of this action, provided that the party, before disclosing any Confidential Information to that individual, shall notify the opposing party of the identity of the proposed recipient and with sufficient information to enable the producing party to determine whether or not to object to such disclosure who shall have three (3) business days from such notice in which to object to such disclosure and five (5) business days from such notice to move for a protective order preventing or limiting such disclosure if the parties are unable to reach an agreement after such objection (except as provided herein, the Idaho Rules of Civil Procedure shall govern the discovery of experts, and nothing herein shall expand those rights of discovery);

(c) The parties or such officers, directors, or employees of the parties who are actively assisting such parties in the prosecution or defense of this action, and for no other purpose;

(d) The Court and court personnel;

(e) Any other person as to whom the producing party agrees in writing;

(f) With respect to any particular document designated as Confidential

Information, any person who is named on the face of such document as having been its author or

one of its recipients, or who appears from other documents or testimony to have been a recipient of such document, provided that each such person signs the Agreement to Be Bound by Stipulated Protective Order (“Agreement”) in the form of Exhibit 1 attached hereto;

(g) Any stenographer or court reporter present in his or her official capacity at any hearing, deposition, or other proceeding in this case.

12. Filing Under Seal. In the event that Confidential Information is used in pretrial depositions, briefs or other documents filed with the Court, or is referred to in any hearing before the Court, the parties shall use best efforts to redact such Confidential Information to avoid the necessity for filing under seal. Only if redaction is impracticable may such use or reference be made under seal and the enclosing envelope shall be marked with the following legend:

“CONFIDENTIAL MATERIAL – FILED UNDER SEAL

The material herein is filed under seal and shall not be opened or disclosed except by the Court or by order of the Court in this action. The material herein is subject to the provisions of the Stipulation and Protective Order of the Court dated _____, 2010.”

Copies of any motion, pleading or other document containing Confidential Information shall be stamped on the cover page with the appropriate legend or legends, and shall specify under the legend the pages of the document containing such Confidential Information.

13. Designation Not Conclusive. The designation of any document, thing or testimony as CONFIDENTIAL is intended solely to facilitate preparation for trial, and the treatment of any document, thing or testimony designated as such shall not be construed as an admission or an agreement that the designated document, thing or testimony contains or discloses any trade secret or confidential information in contemplation of law. No person shall be obligated to challenge the propriety of any such designation, and any failure to do so shall not preclude a subsequent attack on the propriety of any designation of CONFIDENTIAL. In any motion brought to challenge or sustain a designation as CONFIDENTIAL, the burden of

establishing the confidentiality of documents, things or testimony shall be on the party asserting that the designation should be CONFIDENTIAL.

14. Court Ordered Access. If this Court orders that access to or dissemination of information that has been designated CONFIDENTIAL shall be made to persons not included in Paragraph 11 above, such matters shall only be accessible to, or disseminated to, such persons based upon the conditions pertaining to, and the obligations arising from, this Order, and such persons shall be considered subject to it. To the extent practicable, such persons shall execute the Agreement attached hereto as Exhibit 1.

15. Inadvertent Disclosure. If information that has been designated as Confidential Information is disclosed to any person other than in the manner authorized by this Stipulated Protective Order, the person responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of counsel for all parties and, without prejudice to other rights and remedies of any party, make every effort to prevent further disclosure by it or by the person who was the recipient of such information. The party responsible for the unauthorized disclosure shall also exert best efforts to reacquire any Confidential Information from the unauthorized recipient and obtain the signature of the unauthorized recipient on the Agreement attached hereto as Exhibit 1.

16. Documents Derived From Confidential Information. This Order shall also apply to all pleadings, discovery papers, briefs, summaries, notes, abstracts, or other instruments which comprise, embody, summarize, discuss, or quote from any documents produced in the litigation, or deposition testimony transcripts or any other material, designated CONFIDENTIAL, including memoranda or work product prepared by counsel, their staff, or authorized outside consultants or experts which contain information that has been designated CONFIDENTIAL.

17. Procedure for Other Recipients. If it becomes necessary for counsel for a party receiving Confidential Information to seek the assistance of any person other than those specified in Paragraph 11 above, the following procedures shall be employed:

(a) Counsel for the receiving party shall notify, in writing, counsel for the producing party of their desire to disclose such information that has been designated as Confidential Information and shall identify the person(s) to whom they intend to make such disclosure, sufficient for the producing party to determine whether or not to object;

(b) If no objection to such disclosure is made by counsel for the producing party within ten (10) business days of such notification, counsel for the receiving party shall be free to make such disclosure to the designated person(s); provided, however, that counsel for the receiving party shall serve upon opposing counsel, prior to disclosure, an Agreement in the form set forth in Exhibit 1 attached hereto, whereby such person agrees to comply with and be bound by this Stipulated Protective Order;

(c) If the producing party objects to such disclosure, no disclosure shall be made. Any party may bring before the Court the question of whether the particular information that has been designated as Confidential Information can be disclosed to the designated person(s) and the party requesting such disclosure shall have the burden of establishing before the Court the necessity for such disclosure.

18. Relief Available. In the event of a dispute with respect to the designation of any discovery material as Confidential Information, counsel shall endeavor in good faith to resolve their dispute on an informal basis before presenting the matter to the Court for resolution. Any party hereto may seek relief from, or modification of, this Protective Order, and may challenge the designation of any document, thing or testimony as Confidential Information.

19. Judicial Review. Nothing in this Order shall affect the admissibility into evidence of information that has been designated as Confidential Information, or abridges the rights of any person to seek judicial review or to pursue other appropriate judicial action with respect to any ruling made by the Court concerning the issues of the status of documents containing Confidential Information. Agreement to this Order is without prejudice to any party seeking an Order from this Court imposing further restrictions on the dissemination of highly confidential

documents, or seeking to rescind, modify, alter, or amend this order with respect to specific documents.

20. Challenge to Designation. Notwithstanding the designation as CONFIDENTIAL of any testimony, evidence, and other matters, as provided above, and notwithstanding the protection of documents as provided above, said documents, testimony, evidence and matters shall not, in fact be deemed confidential and shall not be subject to this Order, if the content and/or substance thereof:

- (a) is, at the time of disclosure, in the public domain by publication or otherwise;
- (b) becomes at any time, through no act or failure to act on the part of the recipient party, part of the public domain by publication or otherwise;
- (c) is already in the possession of a party at the time of disclosure by the other party and was not acquired directly or indirectly from the disclosing party; or
- (d) is made available to a party by a third party who obtained the same by legal means and without any obligation of confidence to the party claiming its confidential nature.

In the event that any such documents, testimony, evidence or other matters are marked CONFIDENTIAL contrary to the terms of this paragraph, such designation shall be honored by the parties until reviewed by this Court in accordance with the provisions of paragraph 18 of this Order.

21. Request for Information. In the event that any person in receipt of information that has been designated as Confidential Information shall receive a written request, subpoena, or Court order seeking disclosure of another party's information that has been designated as Confidential Information, such person shall promptly notify counsel for the producing party of the request, subpoena, or Court order and shall provide a copy of the same.

22. Information From Non-Parties. In the event any documents, information and/or deposition testimony are obtained from any person not a party to this litigation, such person shall have the same rights to designate any such documents or deposition testimony as Confidential Information, as a party would have, and the use of such documents or deposition testimony by the parties shall be governed in all respects by this Order, PROVIDED that such nonparty agrees to be bound by the terms hereof. The term “party” and “parties” as used herein shall be deemed to include any such nonparties to the extent necessary or appropriate to effectuate the terms of this paragraph.

23. Use of Information. Nothing herein shall prevent a party from using or disclosing its own documents or information. Nothing herein shall prevent the parties from mutually agreeing to the use or disclosure of information that has been designated as Confidential Information, other than as permitted by this Order.

24. Procedure Upon Termination of Proceeding. Within thirty (30) days of the final determination of this proceeding, including all appeals, and unless otherwise agreed to in writing by counsel, each party shall either return or destroy all documents and things constituting Confidential Information produced to a receiving party by the designating party and certify in writing that all copies of such documents and things have been destroyed or returned. Notwithstanding the foregoing, the attorneys of record for each party may retain all pleadings, briefs, memoranda, motions, and other documents containing their work product which refer to or incorporate Confidential Information and will continue to be bound by the terms of this Protective Order with respect to all such retained information.

25. Privileged Information. Nothing contained in this Protective Order shall be construed to require production of Confidential Information which is privileged or otherwise protected from discovery. If a party, through inadvertence, produces a document or information that it believes is immune from discovery pursuant to the attorney-client privilege and/or the work product privilege, such production shall not be deemed a waiver of any privilege, and the

producing party may give written notice to the receiving party that the document or information produced is deemed privileged and that return of the document or information is requested. Upon receipt of such written notice, the receiving party shall immediately gather the original and all copies of the document or information of which the receiving party is aware and shall immediately return the original and all such copies to the producing party. The return of the document(s) and/or information to the producing party shall not preclude the receiving party from later moving the Court to compel production of the returned documents and/or information.

26. Continuing Order and Continuing Jurisdiction. The terms of the Protective Order shall survive the final termination of this proceeding with respect to all Confidential Information that is not or does not become known to the public. The Court shall retain jurisdiction, following termination of this proceeding, to adjudicate all disputes either between the parties hereto or between a party hereto and a third party relating to or arising out of this Protective Order.

27. Custody of Confidential Information. Documents and things designated as containing Confidential Information and any copies or extracts thereof, shall be retained in the custody of the attorneys of record during the pendency of this proceeding, except as reasonably necessary to provide access to persons authorized under the provisions of this Protective Order.

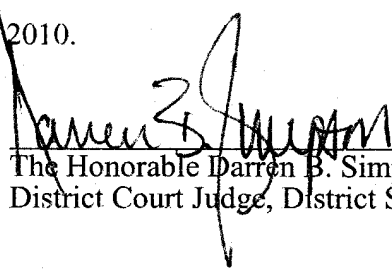
28. Copying and Reproduction. Information that has been designated as Confidential Information shall not be copied or reproduced except to the extent that copying or reproduction is reasonably necessary for the conduct of this lawsuit and all such copies or reproductions shall be subject to the terms of this Order.

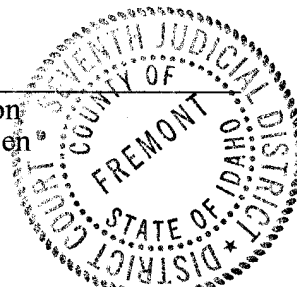
29. Transmission of Confidential Information. Nothing in this Protective Order shall prohibit the transmission or communication of Confidential Information by hand delivery; face-to-face conference; in sealed envelopes or containers via the mails or an established freight, delivery or messenger service; or by telephone, telegram, facsimile or other electronic

///

transmission system if, under the circumstances, there is no reasonable likelihood that the transmission will be intercepted and misused.

DATED this 31st day of March 2010.


The Honorable Darren B. Simpson
District Court Judge, District Seven



IT IS SO STIPULATED:

ATER WYNNE LLP

By: 

Jathan Janove, ISB No. 6969

Email: jj@aterwynne.com

Telephone: (503) 226-1191

Attorney for Defendant Fall River Rural Electric Cooperative, Inc.

Dated: 3-3-10

COX, OHMAN & BRANDSTETTER, CHARTERED

By: 

John M. Ohman, ISB No. 1501

Email: cobjmo@ida.net

Telephone: (208) 522-8606

Attorney for Plaintiff Suzette Bollinger

Dated: 3/4/10

EXHIBIT 1

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC.,

Defendants.

Case No. CV-10-36

**AGREEMENT TO BE BOUND BY
STIPULATED PROTECTIVE ORDER**

I, _____ (print or type name), hereby acknowledge and agree that I have received a copy of the Stipulated Protective Order entered on _____, 2010, in connection with the above captioned case, which is attached hereto, that I have read it and understand its contents, that I agree to be bound by all of the applicable provisions thereof, and that upon the final termination of the case, I agree to return to the producing party all Confidential Information, or copies thereof, disclosed or provided to me.

Date: _____

Signature: _____

Print/Type Name: _____

Firm/Company/Organization: _____

By: _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of March, 2010, I served a true copy of the foregoing **[PROPOSED] STIPULATED PROTECTIVE ORDER** on the persons listed below by mailing, first class, postage prepaid, facsimile, or by hand delivery.

John M. Ohman, Esq.
Cox, Ohman & Brandstetter, Chtd.
PO Box 51600
Idaho Falls, ID 83405

U.S. Mail

Courthouse Box

Facsimile

Jerry Rigby, Esq.
Rigby Andrus & Rigby
PO Box 250
Rexburg, ID 83440

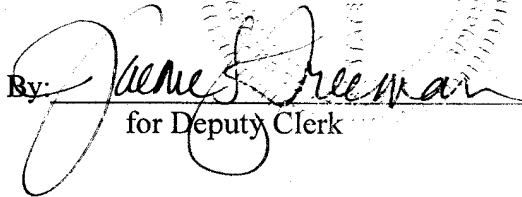
U.S. Mail

Courthouse Box

Facsimile

ABBIE MACE, CLERK

By:



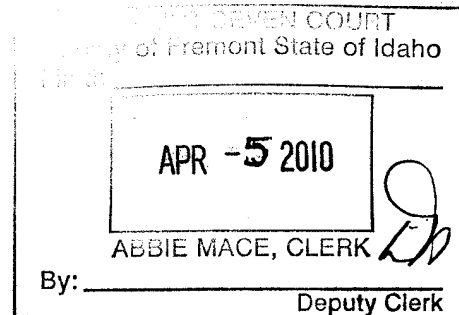
James S. Freeman
for Deputy Clerk

T&T REPORTING

Certified Court Reporting
P.O. Box 51020
Idaho Falls, Idaho 83405 - 1020

March 15, 2010

James M. Barrett, Esq.
ATER WYNNE, LLP
1331 N.W. Lovejoy Street, Suite 900
Portland, OR 97209-3280



Re: State of Idaho, County of Fremont
BOLLINGER vs. FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.
Case No.: CV-10-36
Deposition of: Suzette Bollinger
Taken: March 4, 2010

Dear Mr. Barrett:

Pursuant to Rule 30 (f) (1), I have enclosed the original and a certified copy of the transcript for the deposition taken in the above captioned matter. The E-Transcript has been electronically sent.

Mr. Ohman has been sent a certified copy of the transcript, along with the Verification sheet to obtain the witness' signature, for the deposition taken in the above captioned matter. The transcript has been sent electronically.

If you have any questions, please contact our office.

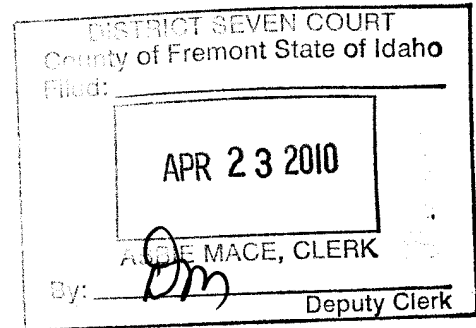
Sincerely,

John Terrill

Enclosures

cc – John M. Ohman, Esq.
Clerk of the Court
File

Offices at: 525 Park Avenue • Suite 1E • Idaho Falls, ID 83405-1020
TELEPHONE 208.529.5491 • 800.529.5491 • FAX 208.529.5496



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ISB No. 6969

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho corporation,

Defendant.

Case No. CV-10-36

**DEFENDANT'S RULE 56(b) MOTION
FOR SUMMARY JUDGMENT**

DEFENDANT'S RULE 56(b) MOTION FOR SUMMARY JUDGMENT - Page 1

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

935856/1/JMB/103889-0003

MOTION

Pursuant to Rule 56(b) of the Idaho Rules of Civil Procedure, defendant Fall River Rural Electric Cooperative, Inc. ("Fall River Electric"), respectfully moves for summary judgment in its favor as to all plaintiff's claims set out in her Amended Complaint and for an order dismissing plaintiff's lawsuit with prejudice.

The grounds for Fall River Electric's motion are that plaintiff fails to state claims for which relief can be granted under Idaho law, and, viewing the facts in a light most favorable to plaintiff, there is no genuine issue as to any material fact for trial. The motion is supported by the Declaration of Bryan Case, James M. Barrett, and the Court's file.

DATED this 19th day of April, 2010.

ATER WYNNE LLP

By: 

Jathan Janove, ISB #6969

James M. Barrett, OSB #011991

(Pro hac vice application pending)

Attorneys for Defendant

DEFENDANT'S RULE 56(b) MOTION FOR SUMMARY JUDGMENT - Page 2

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935856/1/JMB/103889-0003

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT'S RULE 56(b) MOTION**
FOR SUMMARY JUDGMENT on the following:

John M. Ohman
cobjmo@ida.net
Cox, Ohman & Brandstetter, Chartered
510 "D" Street
Idaho Falls, ID 83405-1600

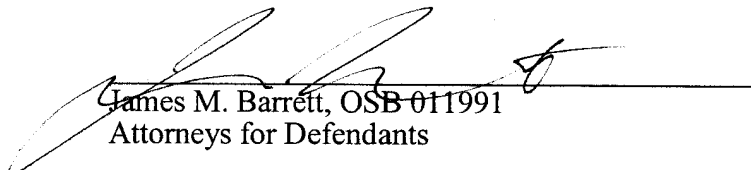
Attorney for Plaintiff

by electronic transmission and U.S. First-Class Mail a true and correct copy thereof to said parties on the date stated below.

In addition, a courtesy copy of this document was sent by U.S. First-Class Mail to the following on the date stated below:

The Honorable Darren B. Simpson
District Judge
501 North Maple, #205
Blackfoot, ID 83221

DATED this 19th day of April, 2010.



James M. Barrett, OSB 011991
Attorneys for Defendants

CERTIFICATE OF SERVICE

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

935856/1/JMB/103889-0003

DISTRICT SEVEN COURT
County of Fremont State of Idaho
Filed: _____
APR 23 2010
By: *Jm* JESSIE MACE, CLERK
Deputy Clerk

Jerry R. Rigby
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(503) 226-1191
ISB No. 6969

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho corporation,

Defendant.

Case No. CV-10-36

**NOTICE OF HEARING ON
DEFENDANT'S RULE 56(b) MOTION
FOR SUMMARY JUDGMENT**

Hearing Date/Time: May 25, 2010/

2:00 p.m.

NOTICE OF HEARING - Page 1

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

934427/1/JMB/103889-0003

TO: THE CLERK OF THE COURT

AND TO: PLAINTIFF SUZETTE BOLLINGER, and her attorney of record John M. Ohman, Cox Ohman & Brandstetter Chtd., PO Box 51600, 510 D Street, Idaho Falls, Idaho 83405.

PLEASE TAKE NOTICE that Jerry Rigby of the law firm Rigby, Andrus & Rigby, Chtd., in Rexburg, Idaho, and Jathan Janove and James M. Barrett of the law firm of Ater Wynne LLP, in Portland, Oregon, shall bring defendant Fall River Rural Electric Cooperative Inc.'s "Rule 56(b) Motion for Summary Judgment" for hearing before the Court at the Fremont County Courthouse, in St. Anthony, Idaho on **the 25th day of May, 2010**, commencing at the hour of **2:00 p.m.**

DATED this 19th day of April, 2010.

ATER WYNNE LLP

By: 

Jathan Janove, ISB #6969

James M. Barrett, OSB #011991

(Pro hac vice application pending)

Attorneys for Defendant

NOTICE OF HEARING - Page 2

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(503) 226-1191

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT'S RULE 56(b) MOTION FOR SUMMARY JUDGMENT** on the following:

John M. Ohman
cobjmo@ida.net
Cox, Ohman & Brandstetter, Chartered
510 "D" Street
Idaho Falls, ID 83405-1600

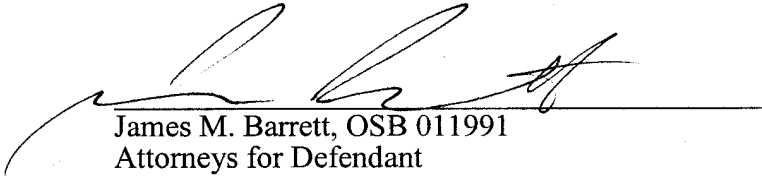
Attorney for Plaintiff

by electronic transmission and U.S. First-Class Mail a true and correct copy thereof to said parties on the date stated below.

In addition, a courtesy copy of this document was sent by U.S. First-Class Mail to the following on the date stated below:

The Honorable Darren B. Simpson
District Judge
501 North Maple, #205
Blackfoot, ID 83221

DATED this 19th day of April, 2010.



James M. Barrett, OSB 011991
Attorneys for Defendant

CERTIFICATE OF SERVICE

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934427/1/JMB/103889-0003

DISTRICT SEVEN COURT
County of Fremont State of Idaho
Filed: _____
APR 23 2010
ABLE MACE, CLERK
By: DM Deputy Clerk

Jerry R. Rigby
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ISB No. 6969

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho corporation,

Defendant.

Case No. CV-10-36

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S RULE 56(b) MOTION
FOR SUMMARY JUDGMENT**

**MEMORANDUM IN SUPPORT OF DEFENDANT'S RULE 56(b) MOTION FOR
SUMMARY JUDGMENT - Page 1**

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881269/1/JMB/103889-0003

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**MEMORANDUM IN SUPPORT OF DEFENDANT’S RULE 56(b) MOTION FOR
SUMMARY JUDGMENT - Page 2**

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881269/1/JMB/103889-0003

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MEMORANDUM IN SUPPORT OF DEFENDANT’S RULE 56(b) MOTION FOR SUMMARY JUDGMENT - Page 3

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(503) 226-1191

881269/1/JMB/103889-0003

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**MEMORANDUM IN SUPPORT OF DEFENDANT'S RULE 56(b) MOTION FOR
SUMMARY JUDGMENT - Page 4**

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881269/1/JMB/103889-0003

INTRODUCTION

This case involves an at-will employment dispute. Plaintiff Suzette Bollinger (“Bollinger”) was formerly employed as the Safety & Loss/Facility Director at defendant Fall River Rural Electric Cooperative, Inc. (“Fall River Electric” or the “Cooperative”). In July 2009, Fall River Electric laid off Bollinger, along with four other employees, due to economic conditions caused by the recession.

Bollinger contends that her termination was unlawful, either because she was not an at-will employee and Fall River Electric’s policies created an express or implied “for cause” employment agreement, or because the Cooperative was retaliating against her for raising safety concerns in her role as Safety & Loss/Facility Director.

Fall River Electric is entitled to summary judgment on all Bollinger’s claims. Not only has Bollinger admitted that she received a copy of Fall River Electric’s at-will employment policy, but even if she was not an at-will employee, Fall River Electric had the right to lay her off because of the lack of work.

As for Bollinger’s allegation that she was laid off in retaliation for raising safety concerns, even if that was true (and it is not), there is no Idaho public policy that protected her against termination for doing something that was one of her primary job responsibilities as Safety & Loss/Facility Director. Fall River Electric took remedial action on every safety issue raised by Bollinger, while Bollinger, for her part, admitted that, after she raised safety concerns, she would make a written note of it “to cover [her] own rear end,” but do nothing further, because she “didn’t want [Fall River Electric] to get in trouble.” There was no wrongful discharge as a matter of law.

MEMORANDUM IN SUPPORT OF DEFENDANT’S RULE 56(b) MOTION FOR SUMMARY JUDGMENT - Page 5

ATER WYNNE LLP
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881269/1/JMB/103889-0003

CONCISE STATEMENT OF MATERIAL FACTS

1. Fall River Electric is a non-profit, member-owned electric cooperative cooperation headquartered in Ashton, Idaho. (Case Aff. ¶ 2.) It employs a workforce of approximately 55 and provides electric utility service to members in eastern Idaho, Montana, and Wyoming. (*Id.*)

Bollinger's Employment History

2. Fall River Electric hired Bollinger as a cashier/receptionist in its Ashton headquarters in October 1988. (Case Aff. ¶ 3.) In 1993, Bollinger was reassigned to the position of Energy Auditor, where her responsibilities included conducting energy analyses for Fall River Electric's members, managing conservation programs, and overseeing the cooperative's cell phone program. (*Id.*)

3. Bollinger continued in the position of Energy Auditor until February 2008. (Case Aff. ¶ 4.) In 2006, Bollinger also assumed the position of Member Services Representative. (*Id.*)

4. In February 2008, Bollinger was promoted to Safety & Loss/Facility Director, a position that she held until her layoff in July 2009. (Case Aff. ¶ 5.)

5. At all times, Bollinger performed her duties in a satisfactory manner. (Case Aff. ¶ 6.)

Bollinger's At-Will Employment

6. At no time did Bollinger enter a written employment agreement with Fall River Electric for a fixed term. (Case Aff. ¶ 7.)

7. At the time Bollinger was hired in 1988, Fall River Electric maintained a written "for-cause" termination policy for regular employees. (Case Aff. ¶ 8, Ex. 1.) An exception

MEMORANDUM IN SUPPORT OF DEFENDANT'S RULE 56(b) MOTION FOR SUMMARY JUDGMENT - Page 6

existed in the event of layoffs because of lack of work. (*Id.*)

8. In October 2004, Fall River Electric adopted a "Work Standards and Personal Conduct Policy." (Case Aff. ¶ 9, Ex. 2.) This policy revised the Cooperative's "for cause" policy. It provided that "[e]mployment with the Cooperative is voluntary and may be terminated by the employee or the Cooperative at any time for any lawful reason." (*Id.*, Ex. 2, pg. 5.) The policy further declared that it superseded any existing and conflicting policy. (*Id.*, Ex. 2, pg. 6.)

9. In March 2009, Fall River Electric adopted an "Employment-At-Will" policy, which provided:

All employees who do not have a separate, individual written employment contract for a specific fixed term of employment are employed at the will of the company and may be terminated by the company at any time, for any reason, with or without notice, except as prohibited by law or the express provisions of any applicable labor agreement. Any contract or agreement that specifies a fixed term of employment must be approved by the board of directors and signed by the president or general manager of the company.

(Case Decl. ¶ 10, Ex. 3, pg. 1.) The Employment-At-Will policy further provided:

Nothing contained in this manual, employee handbooks, employment applications, Cooperative memoranda, or other materials provided to employees in connection with their employment require the Cooperative to have just cause in order to terminate any employee at any time or for any reason. Provided, however, that the Cooperative will not terminate any employee for reasons that violate state or federal law, or the express provisions of any applicable labor agreement.

(*Id.*, pg. 2.)

Lastly, the Employment-At-Will policy provided:

This policy supersedes any existing policy that may be in conflict with the provisions of this policy. This policy does not represent a contract between the employer and employee, and the employer herein may change the policies alone and without notice.

(*Id.*)

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10. The Employment-At-Will Policy was emailed to all Fall River Electric employees on April 6, 2009. (Case Aff. ¶ 11, Ex. 4.) Bollinger received the email. (*Id.*; Bollinger Depo. 191:1-192:2.¹)

Bollinger's Promotion to Safety & Loss/Facility Director

11. Prior to 2008, Fall River Electric's safety programs were the responsibility of its Operations Manager. (Case Aff. ¶ 12.) In late 2007, Fall River Electric created a new position of Safety & Loss/Facility Director that would assume responsibility and oversight of the Cooperative's safety programs and report to the Operations Manager. (*Id.*)

12. Bollinger and three other men applied for the position of Safety & Loss/Facility Director when the opening was posted. (Case Aff. ¶ 13.) After an interview process, Fall River Electric selected Bollinger for the position and promoted her effective February 26, 2008. (*Id.*) At that time, she began reporting to the Operations Manager, Larry Hamilton. (*Id.*)

Bollinger's Responsibilities as Safety & Loss/Facility Director

13. Bollinger's duties and responsibilities as the Safety & Loss/Facility Director were described in a written position description that Fall River Electric provided to her upon her promotion. (Case Aff. ¶ 14, Ex. 5.)

14. With respect to safety, Bollinger was charged with implementing and carrying out state and federal laws, rules, and regulations. (Case Aff. ¶ 15.)

15. Bollinger's specific duties and responsibilities included coordinating and directing monthly safety meetings; overseeing safety programs required by the Occupational Safety and Health Administration ("OSHA"); maintaining various records required to demonstrate Fall

¹ All excerpts of the Suzette Bollinger Deposition ("Bollinger Depo.") cited in this memorandum are attached as Exhibit 1 to the Affidavit of James M. Barrett, filed herewith.

River Electric's compliance with safety rules and regulations; following up on accident investigations, "near misses," and hazard warnings; purchasing safety related equipment; and performing safety and compliance inspections. (Case Aff. ¶ 15.)

16. It was also Bollinger's duty and responsibility to bring to the attention of Fall River Electric's management any failure by the Cooperative to comply with any applicable safety law, rule, or regulation. (Case Aff. ¶ 16; Bollinger Depo., 41:24-42:4; 62:18-24; 71:1-10; 84:16-25; 97:21:24; 110:25-111:5; 125:1-10; 143:19-144:5; 152:18-153:23; 180:21-181:10.)

17. With few exceptions, Fall River Electric took remedial action on every safety issue raised by Bollinger during her tenure as Safety & Loss/Facility Director, albeit not always as fast as Bollinger would have preferred. (Case Aff. ¶ 17.) In fact, notwithstanding severe budget constraints, Fall River Electric spent more on safety in 2009 than in any recent year. (*Id.*) Fall River has a long history of focusing on safety and, among other things, has received an award and recognition in the past for its outstanding record of no lost time accidents. (Case Aff. ¶ 18.) It has achieved 270.866 hours with no lost time accidents as of March 1, 2010. (*Id.*)

Fall River Electric's Layoff of Bollinger

18. The United States economy entered a prolonged and severe recession in 2008 that had a substantial and sustained negative impact on Fall River Electric's business. (Case Aff. ¶ 19.) The Cooperative addressed the impact of the recession in a number of ways, including the implementation of cost-cutting and cost-saving efforts and reducing its workforce through offers of early retirement. (*Id.*) However, even with those measures, by mid-2009, Fall River Electric was faced with the need to take additional steps to bring its staffing in line with reduced workloads. (*Id.*)

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19. On July 27, 2009, Fall River Electric's Board of Directors approved a reduction in force that affected five employees, one of whom was Bollinger. (Case Aff. ¶ 20.)

20. Fall River Electric's General Manager, Bryan Case, made the recommendation of which positions to eliminate, based on the opportunities available for restructuring and consolidation. (Case Aff. ¶ 21.) For example, by placing the Information Systems department under the Finance department, Fall River Electric was able to eliminate the need for one Information Systems position. (*Id.*) Mr. Case recommended elimination of Bollinger's position as Safety & Loss/Facility Director, because it was a new position whose duties and responsibilities could be reabsorbed by the Operations Manager, who previously had been responsible for the oversight and administration of Fall River Electric's safety programs. (*Id.*)

21. Bollinger was laid off on July 28, 2009. (Case Aff. ¶ 22.) She was called into a meeting with Bryan Case, Larry Hamilton, and Mickie Funke and informed of her termination. (*Id.*) She was provided a severance package to take home and review, and Bryan Case offered to write her a letter of recommendation. (*Id.*, Ex. 6.) She was then escorted by Mr. Hamilton and Ms. Funke to her office to collect her things and offered a ride home, which offer she declined. (Bollinger Depo. 162:11-167:15.) She then left Fall River Electric's premises. (*Id.*)

22. In the weeks subsequent to her layoff, Bollinger asked for and received additional letters of recommendation from Larry Hamilton, Mickie Funke, and others. (Case Aff. ¶ 23.) This lawsuit followed.

LEGAL STANDARD

Summary judgment shall be rendered when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). "All

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facts are viewed in the light most favorable to the nonmoving party.” *Ticor Title Co. v. Stanion*, 144 Idaho 119, 122 (2007).

ARGUMENT

A. Bollinger’s Termination Did Not Breach an Express or Implied Contract of Employment or Covenant of Good Faith and Fair Dealing.

Bollinger first alleges that Fall River Electric breached an express or implied contract that she “would be secure in her employment with Fall River so long as she performed in accordance with her job requirements.” (Amend. Compl. ¶ 11.) She further alleges that Fall River Electric breached the implied covenant of good faith and fair dealing. (*Id.* ¶ 13.)

It is settled law in Idaho that, “unless an employee is hired pursuant to a contract which specifies the duration of the employment or limits the reasons for which an employee may be discharged, the employment is at the will of either party.” *Mitchell v. Zilog, Inc.*, 125 Idaho 709, 712 (1994). However, a limitation on at-will employment will be implied when, “from all the circumstances surrounding the relationship, a reasonable person could conclude that both parties intended that either party’s right to terminate the relationship was limited by the implied in fact agreement.” (*Id.*) Unless there is evidence of either an express or implied limitation on at-will employment, an employer’s termination of an at-will employee does not breach the implied covenant of good faith and fair dealing. *See Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 242-43 (2005) (“the covenant of good faith and fair dealing does not alter the right to fire an at-will employee”).

Bollinger testified that, when she was hired in 1988, her supervisor and the manager at Fall River Electric gave her the impression that “if I did my job well, I could be a long-term employee there” and “could retire from there and be part of that employee family for a great

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number of years.” (Bollinger Depo. 209:10-210:13.) In addition to these initial impressions upon her hiring, Bollinger testified that she observed that “people rarely left,” and she believed that “there was a policy in effect at that time, which was clear back in 1988, that said we would not be fired except ‘for cause.’” (*Id.* 210:2-211:8.)

It is true that, at one time, Fall River Electric had maintained a “for cause” termination policy. (Concise Statement of Fact (“CSF”) # 7.) However, at least as early as 2004, the Cooperative promulgated its “Work Standards and Personal Conduct Policy,” providing that “[e]mployment with the Cooperative is voluntary and may be terminated by the employee or the Cooperative at any time for any lawful reason.” (CSF # 8.) Then, in April 2009, Fall River Electric promulgated an express “Employment-At-Will” policy, which Bollinger admits that she received. (CSF # 9.)

Bollinger apparently intends to argue that Fall River Electric’s change to an at-will policy was ineffective as to her, either because the change was made unilaterally without her agreement or because she failed to fully read and/or understand the change when it was given to her. Neither argument is persuasive. Further, even if Fall River’s modification of Bollinger’s employment to at-will was not effective, Bollinger’s termination did not constitute a breach of the Cooperative’s old “for cause” policy.

(1) *An Employer May Unilaterally Modify Employment to At-Will.*

The argument that an employer cannot unilaterally modify a “for cause” policy to an “at-will” policy without the express consent of employees was squarely rejected by the Idaho Court of Appeals in *Parker v. Boise Telco Federal Credit Union*, 129 Idaho 248 (Idaho App. 1996).

In *Parker*, the plaintiff alleged that her termination violated the terms of a policy manual that she was provided at the date of her hiring that did not expressly state that her employment

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was at-will. The employer pointed to a revised policy manual, issued two years later, that contained an express at-will disclaimer. The plaintiff argued that the revision was imposed unilaterally, without her consent. The court ruled in favor of the employer, adopting the reasoning of the Michigan Supreme Court in *Bankey v. Storer Broadcasting Co.*, 443 N.W.2d 112 (Mich. 1989). Specifically, the court agreed that “to require an employer to negotiate policy changes with each existing employee would defeat the purposes for employment policies generally,” and that “an employer, without express reservation of the right to do so, can unilaterally change its written policy from one of discharge for cause to one of termination at will.” *Parker*, 129 Idaho at 254.

The *Parker* court further noted that its decision was consistent with the Idaho Supreme Court’s decision in *Watson v. Idaho Falls Consolidated Hospitals, Inc.*, 111 Idaho 44 (1986). In *Watson*, the court concluded that traditional contract analysis is inadequate to deal with the realities of the workplace, and that a unilateral contract analysis is correct: “[T]he manual is an offer that seeks the formation of a unilateral contract – the employees’ bargained-for action needed to make the offer binding being their continued work when they have no obligation to continue.” *Id.* at 48.

Parker and *Watson* eviscerate any contention by Bollinger that Fall River Electric’s change from a termination “for cause” policy to an “at-will” policy should be declared ineffective as to her because it was made unilaterally without her consent. Bollinger does not dispute that she was provided a copy of Fall River Electric’s “Employment-At-Will” policy by email on April 6, 2009. (CSF # 10.) At her deposition, she was not sure whether she examined it closely or not, but that fact is irrelevant. (See *Bollinger Depo.*, 191:1-192:2) (testifying that

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she could not “remember for sure” whether she looked at the at-will policy, but confirming that she looked at other policies attached to the same email); *Irwin Rogers Ins. Agency, Inc. v. Murphy*, 122 Idaho 270, 273 (Idaho App. 1992) (“The rule in Idaho is well established that a party’s failure to read a contract will not excuse his performance.”).

(2) *Fall River Electric Did Not Breach It’s “For Cause” Policy, Even if It Had Remained In Effect.*

Even if Bollinger could claim that Fall River Electric’s old “for cause” policy remained in effect as to her, she still could not establish that the Cooperative is in breach of an employment agreement.

The terms of that old policy, which was enacted in 1977, clearly provided an exception for termination in the event of layoffs because of “lack of work,” provided that the laid-off employee received: (1) two weeks notice or the cash equivalent; (2) a cash payment for any accrued and unused vacation leave credits up to the maximum number of credits; (3) priority in consideration for any subsequent vacancy for which he (she) is qualified; and (4) credit for prior service toward seniority and other length of service benefits upon subsequent re-employment.

(Case Aff., Ex. 1.)

When Bollinger was laid off, Fall River Electric was in the midst of one of the worst recessions in generations, and the Cooperative offered her a severance package that provided all the cash payments required by its old “for cause” policy. (Case Aff., Ex. 7.) If the Court finds that the old policy remained in effect as to Bollinger, it should enforce only its terms, and Fall River Electric will stipulate to all its remaining provisions. *See Sanderson v. Fist Sec. Leasing Co.*, 844 P.2d 303, 306 (Utah 1992) (even assuming handbook provisions constituted a contract, court would enforce *only* those provisions).

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B. Bollinger Has No Claim for Wrongful Discharge in Violation of Public Policy, Because Expressing Safety Concerns Was Her Job, Not “Protected Activity.”

As an alternative to her breach of contract theories, Bollinger alleges that Fall River Electric violated Idaho public policy by terminating her in retaliation for expressing “concerns over various safety issues, most of which were explicitly governed by statute, rule, or regulation.” (Amend. Compl. ¶¶ 12, 14.)

Idaho recognizes a public-policy exception to at-will employment where a discharged employee has (1) refused to commit an unlawful act; (2) performed an important public obligation; or (3) exercised certain rights or privileges. *Thomas v. Medical Center Physicians*, 138 Idaho 200, 208 (2002) (citing *Sorensen v. Comm Tek, Inc.*, 118 Idaho 664, 668 (1990)). Whether a particular action falls within a public policy exception is a question of law. *Edmondson v. Shearer Lumber Prods.*, 139 Idaho 172, 176 (2003).

Here, Bollinger likely will point to *Ray v. Nampa School District*, 120 Idaho 117 (1991), for the proposition that, as a matter of law, reporting safety violations in the workplace is an “important public obligation” that falls within the public policy exception. In *Ray*, the plaintiff was a maintenance electrician employed by a school district. Among other things, he alleged that he was wrongfully terminated in violation of public policy after reporting several electrical and building safety code violations to the state inspector. (*Id.* at 121.) The Idaho Supreme Court agreed that there was at least an issue of fact as to whether the school district terminated the plaintiff in violation of public policy, noting that the Director of Services at the school district even admitted in his deposition that the plaintiff had been fired because he had “made contact with the state electrical engineer.” (*Id.*)

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Ray is readily distinguishable from this case. First, Bollinger was not a “whistleblower,” like the electrician in *Ray*, raising the alarm about safety infractions with outside authorities in opposition to her employer’s wishes. To the contrary, Bollinger never reported safety concerns to any regulatory authority or even threatened to make such reports, because she “felt loyal to her company” and “didn’t want them to get in trouble.” (Bollinger Depo. 207:14-23.) Instead, she kept private notes of her opinions regarding Fall River Electric’s failure to comply with safety regulations “to cover [her] own rear end”:

- Q. And you were keeping notes of events of significance, for what purpose?
- A. Because I wanted to be able to document that there were issues that I was bringing up that were not being enforced.
- Q. And why did you do that?
- A. To cover my own rear end.
- Q. I see. So, in case OSHA did come in and start asking questions, you would have something to produce to show that you had raised these issues with management?
- A. Yes.

(*Id.* 157:23-158:10.)

Second, Bollinger conceded that raising safety concerns with Fall River Electric’s management was one of her primary duties and responsibilities as Safety & Loss/Facility director. (CSF #16.) That is a critically important fact, not present in *Ray*, that precludes Bollinger’s ability to claim the protections of the public policy exception to at-will employment. Simply put, Bollinger cannot contend that her reporting of safety violations to management was protected activity, *when reporting safety violations was her job*.

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It has long been recognized that, to engage in “protected activity,” an employee must actively oppose the employer and “step outside his or her role of representing the company.” *McKenzie v. Renberg’s Inc.*, 94 F.3d 1478, 1486 (10th Cir. 1996). That requirement is implicit in Idaho’s formulation of the public policy exception to at-will employment: An employee must perform a “public obligation,” not a private obligation imposed by the employer. *Thomas*, 138 Idaho at 208 (emphasis added). The Fifth Circuit Court of Appeals explained the rationale behind the rule:

If we did not require an employee to ‘step outside the role’ or otherwise make clear to the employer that the employee was taking a position adverse to the employer, nearly every activity in the normal course of a manager’s job would potentially be protected activity An otherwise typical at-will employment relationship could quickly degrade into a litigation minefield, with whole groups of employees – management employees, human resources employees, and legal employees, to name a few – being difficult to discharge without fear of a lawsuit.

Hagan v. Echostar Satellite, LLC, 529 F.3d 617, 628 (5th Cir. 2008).

Following the logic of *McKenzie* and *Hagan*, courts have routinely dismissed claims by plaintiffs who, like Bollinger, contended that they were engaged in “protected activity” when they raised various concerns with their employer, when, in fact, they were simply doing their job. *See, e.g., Luchetti v. Hershey Co.*, 2009 WL 2912524, * 5 (N.D. Cal. Sept. 9, 2009) (plaintiff who was responsible for implementing safety procedures had not engaged in protected activity by informing supervisor of safety violations, “a matter that plaintiff admit[ted] was within his job duties”); *Samons v. Cardington Yutaka Technologies, Inc.*, 2009 WL 961168, * 7 (S.D. Ohio Apr. 7, 2009) (plaintiff did not engage in protected activity when she notified superiors of federal wage and hour violations as part of her job duties as human resources manager); *Correa v. Mana Products, Inc.*, 550 F. Supp. 2d 319, 330-31 (E.D.N.Y. 2008) (Human Resources Manager’s investigation of discrimination complaints was not protected activity when that “was actually

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part of her job description”); *Clemons v. Nike, Inc.*, 2007 WL 2890972, * 9-10 (D. Or. Sept. 28, 2007) (Senior Employee Relations Specialist did not engage in protected activity by raising concern over whether her employer had made adequate effort to comply with ADA, when she was “performing her job”); *Lund v. Leprino Foods Co.*, 2007 WL 1775474, * 8 (E.D. Cal. Jun. 20, 2007) (Safety Supervisor’s investigation and report of hazardous chemical spill was not protected activity when “part of his regular duties”).

As a final matter, if Bollinger had actually performed a public duty and filed a report with OSHA, she clearly would have been protected against retaliation and afforded a statutory remedy. *See* 29 U.S.C. 660(c) (“Any employee who believes that he has been discharged or otherwise discriminated against by any person [because such employee has filed any complaint with OSHA], may, within thirty days after such violation occurs, file a complaint with the Secretary[.]” Bollinger chose not to file a report with OSHA and yet still seeks to have her activities protected under Idaho public policy. Other courts have held that the OSHA remedy is exclusive, precluding any claim for public policy wrongful discharge. *See, e.g., Miles v. Martin Marietta Corp.*, 861 F. Supp. 73, 74 (D. Colo. 1994) (“Colorado law is clear that a separate public policy wrongful discharge claim is not available where the statute at issue provides a wrongful discharge remedy[.]” and “[OSHA] has been held to provide such a remedy.”); *Hines v. Elf Atochem N. Am., Inc.*, 813 F. Supp. 550 (W.D. Ky. 1993) (OSHA and state’s version preempt private cause of action for wrongful discharge).

In sum, Bollinger’s expression of safety concerns as the Safety & Loss/Facility Director, which was a function of her job, and her “cover-my-own-rear-end” response to Fall River Electric’s perceived failure to address those concerns, is not the kind of conduct protected by

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Idaho's public policy exception to at-will employment.

C. Bollinger's Claim for Negligent Infliction of Emotional Distress Is Preempted by the Exclusivity of Idaho's Workers' Compensation Law.

Bollinger next alleges that the manner in which Fall River Electric terminated her employment – *i.e.*, “effective immediately, without cause or notice” – was negligent and caused her to suffer from “post-traumatic stress, depression, anxiety, insomnia, and irritability.”

(Amend. Compl. ¶¶ 15-18.)

Even assuming that Fall River Electric's conduct breached a duty of care towards Bollinger that caused her to suffer physical injury,² any negligence-based theory of liability is preempted by Idaho's Worker's Compensation Law, which provides Bollinger with her exclusive remedy. *See* I.C. § 72-209(1) (“the liability of the employer under this law shall be exclusive and in place of all other liability of the employer to the employee . . .”); *DeMoss v. City of Coeur D'Alene*, 118 Idaho 176, 178 (1990) (“Employers and their other employees and agents are exempt from tort liability for industrial accidents under the worker's compensation statutes[.]”).

The only exemption to the exclusivity of Idaho's Worker's Compensation Law is “where the injury or death is proximately caused by the willful or unprovoked physical aggression of the employer.” I.C. § 72-209(3). Bollinger has not alleged that her termination was accompanied by “unprovoked physical aggression” on the part of Fall River Electric or its employees. Indeed, conduct that is allegedly “negligent,” by definition, is not “willful.” *See, e.g., Masters v. State*, 105 Idaho 197, 205 (1983) (“Willful and wanton misconduct, in the strict sense, is not

² Bollinger has produced no evidence of physical injury. *See Cook v. Skyline Corp.*, 135 Idaho 26, 35 (2000) (“[T]here must be both an allegation and *proof* that a party claiming negligent infliction of emotional distress has suffered a physical injury, *i.e.*, a physical

negligence, since it involves intent rather than inadvertence, and is positive rather than negative.”).

Accordingly, Bollinger’s claim that she suffered emotional distress as a result of Fall River Electric’s “negligence” is precluded and must be dismissed. *See, e.g., Ward v. Sorrento Lactalis, Inc.*, 392 F. Supp. 2d 1187, 1195 (D. Idaho 2005) (“The Court concludes that [I.C. § 72-209] precludes Plaintiff’s claim for negligent infliction of emotional distress.”) (citing *DeMoss, supra*, 118 Idaho 176).

D. Bollinger Cannot State a Prima Facie Case of Intentional Infliction of Emotional Distress.

Bollinger’s final claim is that the manner in which Fall River Electric terminated her employment – *i.e.*, “effective immediately, giving [Bollinger] 30 minutes to ‘pack up [her] office,’” – was not negligent, but rather intentionally “extreme and outrageous,” and caused Bollinger “severe emotional distress” that has prompted her to seek counseling and therapy. (Amend. Compl. ¶¶ 19-21.)

Under Idaho law, four elements are necessary to establish a claim for intentional infliction of emotional distress (“IIED”): (1) The conduct must be intentional or reckless; (2) The conduct must be extreme and outrageous; (3) There must be a causal connection between the wrongful conduct and the emotional distress; and (4) The emotional distress must be severe. *Nation v. State, Dep’t of Correction*, 144 Idaho 177, 192 (2007).

“It is for the court to determine, in the first instance, whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous as to permit recovery[.]” *Edmondson v. Shearer Lumber Prods.*, 139 Idaho 172, 180 (2003) (quoting *Restatement (2d) Torts* § 46, cmt.

manifestation of an injury *caused* by the negligently inflicted emotional distress.”) (emphasis in

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h (1965)). As a general rule, Idaho courts have required a showing of conduct that is “very extreme.” *Id.* In other words, the defendant’s conduct must be more than simply “unjustifiable,” and must rise to the level of “atrocious” conduct, “beyond all possible bounds of decency,” so that it would “cause an average member of the community to believe it was ‘outrageous.’” *Id.*, at 180.

Here, as noted, Bollinger alleges only that she was told her termination was “effective immediately” and was given 30 minutes to “pack up her office.” (Amend. Compl. ¶¶ 19-21.) At her deposition, Bollinger provided additional contextual details. She testified that she was informed of the termination decision in a private, closed-door meeting with the General Manager, Bryan Case, the Operations Manager, Larry Hamilton, and the Staff Assistant, Mickie Funke. (Bollinger Depo. 162:11-167:15.) At that meeting, Bollinger was presented with a severance package to take home to review and Mr. Case offered to write Bollinger a letter of recommendation, which offer Bollinger later accepted. (*Id.* 172:17-173:17.) Bollinger was then escorted by Mr. Hamilton and Ms. Funke to her office to collect her things. (*Id.*, 162:11-167:15.) Mr. Hamilton and Ms. Funke did not tell Bollinger that she had 30 minutes to pack up her office, but, according to Bollinger, they did tell her that she needed to “hurry,” because they had to attend a meeting, and so they helped her put her personal belongings in boxes. (*Id.*) Bollinger claims that Mr. Hamilton and Ms. Funke would not let other employees console her while she was packing up her things, but that two employees pushed past them and gave her a hug. (*Id.* 164:7-20.) She admits that Mr. Hamilton and Ms. Funke offered her a ride home, which she declined, and that she told both of them that she was “going to be okay.” (*Id.* 165:2-16.)

original, internal quotations omitted).

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Bollinger described Mr. Hamilton's demeanor during this exit process as "nervous, anxious, wanting me to get out," and Ms. Funke as "[feeling] sorry for me." (Bollinger Depo. 167:7-15.) She testified that the whole exit process, from beginning to end, "wasn't very long," and took approximately one hour. (*Id.* 169:11-14.)

Bollinger's description of her termination, on its face, does not remotely approach the "very extreme" and "atrocious" conduct that would support an IIED claim. The Idaho Supreme Court's decision in *Edmonson* is analogous and instructive. There, as here, the plaintiff alleged that he was a long-time employee with an excellent employment record who was summarily fired. 139 Idaho at 180. Also, as here, the plaintiff objected to the fact that he was taken to his office and his locker to collect his belongings and then immediately escorted off the premises. (*Id.*) On those facts, the Idaho Supreme Court affirmed the trial court's dismissal of the plaintiff's IIED claim: "Where the defendant has done nothing more than to insist upon his rights in a permissible way, even though he is well aware that such an insistence is certain to cause emotional distress, liability for [IIED] does not lie." (*Id.*)

As in *Edmonson*, many courts have similarly held that an employer's mere discharge of a long-time employee, even when coupled with a directive that he or she gather personal belongings under the supervision of an escort and leave the employer's premises immediately, is not "outrageous" and does not give rise to an IIED claim. *See, e.g., Richardson v. East River Elec. Power Co-op*, 531 NW 2d 23, 28-29 (SD 1995) (termination of employee in private conference room followed by directive to gather personal belongings under escort of immediate supervisor was not "outrageous," but "civilized, if not particularly pleasant" for plaintiff); *Wornick Co. v. Casas*, 856 S.W.2d 732, 735 (Tex. 1993) (employer's requirement that

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terminated employee leave work premises immediately under security guard escort was not outrageous); *Corum v. Farm Credit Servs.*, 628 F. Supp. 707, 718-19 (D. Minn. 1986) (firing plaintiff after years of loyal service and requiring him to clean out his desk and leave immediately not outrageous); *Toth v. Square D Co.*, 712 F. Supp. 1231, 1238 (D.S.C. 1989) (discharging long-term employees with no advance notice and escorting them from the plant in the presence of their peers not outrageous); *Seneca Knitting Mills Corp. v. Wilkes*, 502 N.Y.S.2d 844, 845 (1986) (escorting plaintiff from the premises upon his termination not outrageous).

CONCLUSION

For the foregoing reasons, Fall River Electric respectfully requests that the Court grant summary judgment in Fall River's favor and dismiss Bollinger's claims with prejudice.

DATED this 19th day of April, 2010.

ATER WYNNE LLP

By: 

Jathan Janove, ISB #6969

James M. Barrett, OSB #011991

(Pro hac vice application pending)

Attorneys for Defendant

**MEMORANDUM IN SUPPORT OF DEFENDANT'S RULE 56(b) MOTION FOR
SUMMARY JUDGMENT - Page 23**

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT'S RULE 56(b) MOTION FOR SUMMARY JUDGMENT** on the following:

John M. Ohman
cobjmo@ida.net
Cox, Ohman & Brandstetter, Chartered
510 "D" Street
Idaho Falls, ID 83405-1600

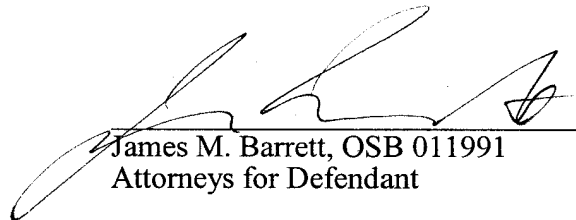
Attorney for Plaintiff

by electronic transmission and U.S. First-Class Mail a true and correct copy thereof to said parties on the date stated below.

In addition, a courtesy copy of this document was sent by U.S. First-Class Mail to the following on the date stated below:

The Honorable Darren B. Simpson
District Judge
501 North Maple, #205
Blackfoot, ID 83221

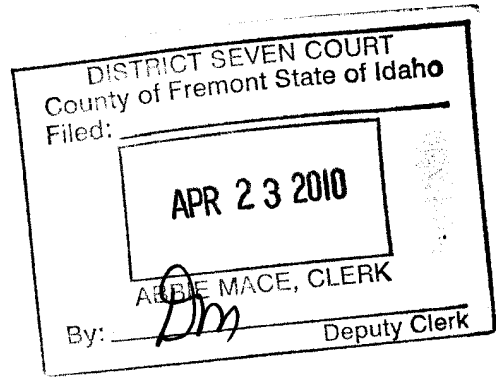
DATED this 19th day of April, 2010.


James M. Barrett, OSB 011991
Attorneys for Defendant

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Attorneys for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho corporation,

Defendant.

Case No. CV-10-36

**AFFIDAVIT OF JAMES M. BARRETT IN
SUPPORT OF DEFENDANT'S RULE
56(b) MOTION FOR SUMMARY
JUDGMENT**

AFFIDAVIT OF JAMES M. BARRETT - Page 1

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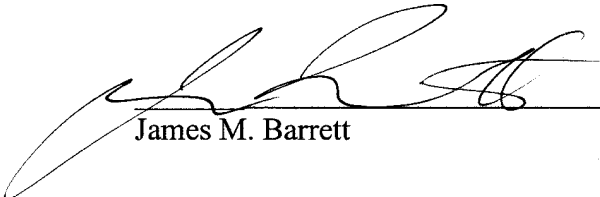
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STATE OF OREGON)
) ss.
County of Multnomah)

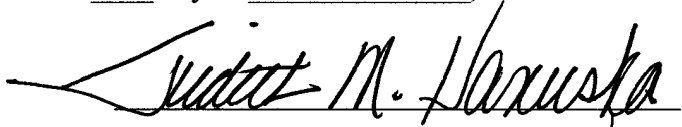
I, James M. Barrett, swear and affirm as follows:

1. I am an attorney at Ater Wynne LLP residing in Portland, Oregon, and I represent defendant Fall River Rural Electric Cooperative, Inc. ("Fall River Electric") in the above-captioned matter.

2. Attached as EXHIBIT 1 are true and correct excerpts from the transcript of the March 4, 2010 deposition of plaintiff Suzette Bollinger.

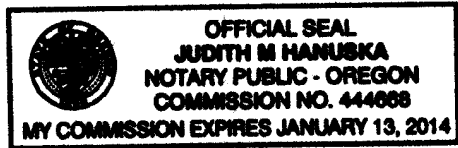

James M. Barrett

SUBSCRIBED AND SWORN TO before me this 15th day of APRIL, 2010.



Notary Public for OREGON

My Commission Expires: 01/13/2014



Transcript of the Testimony of **Suzette Bollinger**

Date: March 4, 2010

Volume: I

Case: BOLLINGER vs. FALL RIVER RURAL ELECTRIC COOPERATIVE

Printed On: March 25, 2010

T&T Reporting
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Internet: TandTReport@ida.net

1 I believe that was left off.

2 Without having my notes and those
3 documents in front of me, I can't remember any
4 other things.

5 But I know that there were a
6 significant number of things that were left out.

7 Q. Did you have any conversations with
8 anybody at Fall River when you reviewed the
9 approved budget and saw what had been left out?

10 A. Larry Hamilton and I discussed it.

11 And I do remember that one of the big
12 things was that there was no money for Arc flash
13 clothing in the budget.

14 Q. And why was that a concern?

15 A. Because by January 1, 2009, it was
16 mandated, by law, through the NESC Code, the
17 National Electrical Safety Code, that all
18 utilities would complete an assessment of their
19 system and determine what value of clothing the
20 employees needed to wear to be protected from Arc
21 flash.

22 The clothing was rated on a calorie
23 system and we needed to have that in place.

24 Q. Did you understand it to be your
25 responsibility as the Safety & Loss/Facility

1 Director to insure that that need for the Arc
2 flash clothing was brought to the attention of
3 management at Fall River?

4 A. Yes.

5 Q. And what were Larry Hamilton's views on
6 that issue?

7 A. He realized the need for the clothing,
8 as well; and that's why we had discussed it and
9 tried to come up with a budget figure.

10 Q. How did that issue get resolved, if it
11 did and if you know?

12 A. We did end up ordering some Arc flash
13 clothing, minimums. Five shirts for each
14 employee and a sweatshirt, if they chose.

15 There were other needs that we had as
16 far as outerwear for wintertime.

17 And I was told, on numerous occasions,
18 that we would not be ordering that because it was
19 not in the budget, even though there were many
20 employees that did not have proper outerwear with
21 an Arc flash or with a calorie rating.

22 The last time that we had ordered
23 outerwear for our employees was sometime prior to
24 1998.

25 Some of them were wearing clothing that

1 they laughed at me. Both of the engineers, Dave
2 Trosen and Dave Peterson and Larry Hamilton said
3 I was wrong.

4 And, then, later Dave Trosen and Dave
5 Peterson attended the same training and they came
6 back and they agreed that 480 volt was going to
7 be our most serious issue.

8 But this assessment was not done on
9 time and it was several months after this that
10 the clothing was purchased.

11 I should also note that the reason
12 January 1, 2009 was put into the NESC Code is
13 because that the NESC Committee thought that OSHA
14 would have their requirements for Arc flash in
15 place by that time; when, in fact, OSHA did not
16 have their requirements in place.

17 And, to my knowledge, they still don't.

18 Q. Did you feel that it was your
19 responsibility as Safety Director to make sure
20 that Fall River was in compliance with the Arc
21 flash clothing requirements on a timely basis, as
22 you viewed it?

23 A. I did feel it was my responsibility,
24 but it was something that I could not control.

25 Mr. Hamilton, ultimately, had to be the

1 Q. Do you believe that it was part of your
2 responsibility, as the Safety Director, to bring
3 to Fall River's attention the fact that the fire
4 extinguishers needed to be checked and that this
5 was not being done?

6 A. Yes. Because in my job description, it
7 says: Directs Emergency Action, Security
8 Programs, Fire Extinguisher, and other OSHA
9 programs.

10 It was my responsibility.

11 Q. Okay. I want you to turn to the second
12 to the last page in the March meeting minutes.

13 There are a number of bullets under a
14 subsection: Accidents and/or Near Misses.

15 There's one at the very end reflecting
16 a report that you had made that the FR clothing
17 has been handed out and we were told that they
18 were to be worn.

19 So, is it fair to assume, then, that at
20 this point, in March of 2009, the Arc flash
21 clothing had been ordered, received and handed
22 out to the linemen.

23 A. That is correct. The initial order had
24 been received of five shirts per employee.

25 Notice, again, that this is March.

1 A. Yes.

2 Q. So, you're having a heated discussion.

3 This is also a separate discussion than
4 the one that you had had at some earlier point
5 where you had made the joke about just going
6 straight to the Board.

7 A. Yes.

8 Q. And now we're having a second heated
9 discussion about the railing.

10 You're raising the issue of the railing
11 and Mr. Case is pushing back and it's a heated
12 conversation about what is required. Yes?

13 A. Yes.

14 Q. Did you believe it to be one of your
15 or --

16 Is it true that it was one of your job
17 responsibilities to report a belief that
18 something, such as the safety railing in this
19 case was required and to bring that to the
20 attention of Fall River management?

21 A. Yes.

22 Q. Okay. And that's based -- I see you
23 looking at your position description; is that
24 correct?

25 A. Yes.

1 A. He did.

2 Did he check his own fire extinguisher
3 in his own truck that he was responsible for?

4 No.

5 Q. When did you determine that?

6 A. I can look that up in those notes for
7 you.

8 Q. In the -- what notes?

9 A. In the binder.

10 MR. OHMAN: For the record, the binder
11 to which she refers is a binder that I've
12 prepared from the discovery you produced.

13 But Counsel wouldn't have a copy of the
14 binder, so he wouldn't know what it is you're
15 referring to.

16 THE WITNESS: Oh.

17 A. In the discovery documents, there is a
18 list of notes. And I believe that it's mentioned
19 in there.

20 BY MR. BARRETT:

21 Q. So, did you, as part of your duties and
22 responsibilities as Safety Director, undertake a
23 spot check of the fire extinguishers?

24 A. Yes.

25 Q. And is that how you discovered the fact

1 him that I was leaving to go to my mother's
2 doctor's appointment, which I had previously had
3 approved by him that I could leave to go to that
4 with her. She had broken her leg severely and
5 had been in a nursing home and I needed to be in
6 attendance.

7 And he said: Well, I need to talk to
8 you before the day is out.

9 Well, it's 3:15. Her appointment was
10 in Rexburg.

11 I said: Well, I have a few minutes.
12 I'll come in.

13 And at that point he talked to me about
14 this and he said he felt like he had been
15 blind-sided, that this was not something that
16 should have been brought up in a Safety Meeting
17 without discussing it with him first and that he
18 didn't agree. He, basically, said that he
19 didn't -- still didn't agree that it was a
20 requirement for the linemen. He said they needed
21 to be wearing proper shoes, but he did not
22 acknowledge what proper shoes were.

23 And I missed my mother's doctor's
24 appointment, which was very important to me.

25 Q. Was it your responsibility, as Safety

1 Director, to bring to the attention to Larry
2 Hamilton and others in Fall River management a
3 requirement that the steel-toed boots needed to
4 be worn by Fall River employees?

5 A. Absolutely.

6 Q. Okay.

7 MR. BARRETT: Let's break for lunch. I
8 don't know if we're completely done with June
9 25th, but we'll start there when we get back.

10 (A recess was taken from 12:16 P.M. to
11 1:01 P.M.)

12 BY MR. BARRETT:

13 Q. Ms. Bollinger, we're back from lunch
14 and you remain under oath. Do you understand?

15 A. Yes.

16 Q. Is there any testimony from this
17 morning's session that you want to clarify or
18 change?

19 A. I don't think so.

20 Q. We were talking about the June 25th
21 Safety Meeting and the minutes associated with
22 that meeting, Exhibit 8. So, I want to make sure
23 you have those in front of you.

24 A. Yes.

25 Q. And if we retread a little bit of what

1 Q. And, so, in this memo, your intent was
2 to make an official recommendation with respect
3 to what Fall River employees should be doing with
4 respect to wearing protective footwear and why,
5 correct?

6 A. Yes.

7 Q. And was it your responsibility, as a
8 Safety Director, to make recommendations like
9 this one?

10 A. Absolutely.

11 Q. You also in Item 6 quote the Union
12 contract and point to the provision which
13 suggests that the employer shall -- or let's
14 see -- shall enforce the reasonable rules and
15 regulations.

16 Is this the grounds for the
17 determination that the Union contract required
18 the employer, Fall River, to purchase the
19 steel-toed boots?

20 A. No.

21 Q. Okay. Is that in this document?

22 A. No. I mention it down in the bottom
23 paragraph... the very last paragraph.

24 Q. Thank you.

25 And you mentioned that there's an

1 Brent Smith about it because Brent operated the
2 Hydros.

3 And, so, when Dee retired, I asked him
4 about it: To follow up before he left. And he
5 told me that he would convey all of the
6 information in regards to those two issues to Mr.
7 Case.

8 Mr. Case sent this information out
9 saying that there was going to be an event there
10 and that there was going to be public invited.

11 And I was concerned for their safety
12 because those stairs -- an individual had rolled
13 a huge rock down those stairs and they were all
14 bent up and tipped and it was an unsafe way to
15 access the Hydro building.

16 And if anyone had been going down there
17 and had tripped and fallen, they would have been
18 seriously injured.

19 Q. Was it your responsibility, as Safety
20 Director, to bring to the attention of Mr. Case
21 the safety issues that you saw with having a
22 public event at Buffalo Hydro?

23 A. My title was Safety & Loss Control.
24 Loss Control had to do with things that
25 would be causing a loss of revenue or financial

1 money to Fall River Electric.

2 If someone had gotten hurt on those
3 stairs, they would have sued us.

4 Q. Your answer is yes?

5 A. Yes.

6 Q. In response to Bryan Case's e-mail to
7 you that, in his belief, it was your
8 responsibility and to let him know what you find
9 out.

10 You asked for Brent Smith's number
11 because you knew that's who Bryan Case's
12 predecessor, Mr. Reynolds, had delegated these
13 issues to. Yes?

14 A. Yes.

15 Q. And you explained to him that it was
16 your understanding that it was Brent Smith who
17 was supposed to report back to you and that you
18 would be glad to call him, correct?

19 A. Yes.

20 Q. And did you, in fact, call him?

21 A. Yes.

22 (Exhibit No. 14 marked.)

23 BY MR. BARRETT:

24 Q. Exhibit 14, this is your follow-up to
25 Mr. Case and also you copy Mr. Hamilton on what

1 A. Yes.

2 Q. Here it was not omitted. There's a
3 discussion about whether the company will pay for
4 them or not. Is that true? Do you remember
5 that?

6 A. Yes.

7 Q. And it says that Larry said: We are
8 moving -- I suppose -- "in" that direction.

9 Do you remember a comment to that
10 effect?

11 A. I don't remember that specifically.

12 But, there again: Why is there a
13 discussion about whether they would pay for them
14 or not? It's the law. They have to pay for
15 them. It's not up for question.

16 He still is not on board with that
17 either.

18 Q. At this point in time, what were you
19 considering doing?

20 It doesn't sound like you were getting
21 the resolution that you want at the speed that
22 you want. It's taking several weeks and movement
23 is incremental.

24 So, what was your intent at that point?

25 A. I was still trying to convince them and

1 make them understand that they didn't have a
2 choice.

3 I didn't have a plan for how to
4 implement it because I didn't have control of
5 that.

6 Mr. Case had control of the money. I
7 couldn't just go and purchase them.

8 So, I didn't have a plan. I was still
9 trying to encourage them and help them to
10 understand that it was not something that was up
11 for discussion and it was a choice.

12 And what I don't understand is that
13 their necks were on the line. They're the ones
14 that were responsible.

15 If OSHA had come in, if anyone had
16 called them, they would have been the ones that
17 would have been fined and Fall River would have
18 been fined.

19 It wasn't me. It was them.

20 Q. Did you feel that -- well, was it your
21 responsibility, as Safety Director, to keep after
22 them on this issue?

23 A. Absolutely.

24 Q. Okay.

25 A. May I interject something there?

1 (Exhibit No. 16 marked.)

2 BY MR. BARRETT:

3 Q. So, Exhibit 16 are notes in the
4 document from which you just read into the record
5 to refresh your recollection, correct?

6 A. Yes.

7 Q. And these notes were prepared by you,
8 correct?

9 A. Yes.

10 Q. Were they prepared contemporaneously
11 with the date reflected on them?

12 So, in other words, July 1, 2009, was
13 that the day you were writing these? Or were
14 they written at a later date?

15 A. Yes, they were written on July 1st and
16 then --

17 Q. In subsequent dates?

18 A. In subsequent dates, yes.

19 Q. So, this was a document that you had on
20 your computer at work, a sort of diary, if you
21 will?

22 A. Yes.

23 Q. And you were keeping notes of events of
24 significance, for what purpose?

25 A. Because I wanted to be able to document

1 what was said and document that there were issues
2 that I was bringing up that were not being
3 enforced.

4 Q. And why did you do that?

5 A. To cover my own rear end.

6 Q. I see. So, in case OSHA did come in
7 and start asking questions, you would have
8 something to produce to show that you had raised
9 these issues with management?

10 A. Yes.

11 Q. Okay. Can you -- for the record, as
12 you're under oath now, can you attest to the
13 accuracy and truthfulness of the notes as
14 reflected here?

15 A. Yes.

16 Q. And they are accurate and they are
17 truthful?

18 A. Yes.

19 Q. Let's go to the next exhibit.

20 (Exhibit No. 17 marked.)

21 BY MR. BARRETT:

22 Q. Now, Exhibit 17 is an e-mail exchange
23 between yourself and Mr. Endicott on July 28,
24 2009.

25 Do you recall authoring these e-mails?

1 Hamilton?

2 A. I did.

3 Q. What about the handrail issue, did you
4 have an opportunity to resolve that issue before
5 you were laid off?

6 A. No, I did not. I was waiting on
7 another bid to see if we could get it any
8 cheaper.

9 That was a bid that I had not been
10 asked to procure. One that I did on my own.

11 Q. Okay. All right. You were informed
12 that the company was laying you off and
13 eliminating your position on July 28th of 2009,
14 correct?

15 A. Yes.

16 Q. Explain to me how that communication
17 was made to you.

18 A. I was taken into Bryan's office by my
19 Supervisor, Larry Hamilton, and I was informed
20 that I no longer worked there.

21 Q. So, let me be clear. Who all was in
22 attendance at this meeting to convey this
23 information to you?

24 A. Bryan, Mickie Funke and Larry Hamilton.

25 Q. What specifically, to the best of your

1 recollection, were you told?

2 A. That my position had been eliminated
3 and that I needed to gather my things and leave.

4 Q. And anything else?

5 A. They mentioned that they were offering
6 me a severance package and they handed me
7 documents that I could look over.

8 I think maybe Mickie ran through those
9 quickly to tell me what was in them.

10 They told me that I would be eligible
11 for COBRA insurance.

12 They did not, however, tell me that
13 they were cancelling my insurance that day, the
14 day that I was leaving on vacation.

15 I asked them if I was eligible for
16 unemployment and Mr. Case said we have decided to
17 let you claim unemployment.

18 Q. Were you told that you would be allowed
19 to take the documents you were provided home with
20 you?

21 A. Yes.

22 Q. They were not asking you to sign
23 anything that day, correct?

24 A. That's correct.

25 Q. Anything else said at this meeting?

1 A. Not that I recall.

2 Q. When you were told that you needed to
3 collect your things and leave, were there any
4 guidelines provided to you as to how that would
5 happen?

6 A. Not that I recall.

7 Q. Did anybody accompany you in order to
8 accomplish that?

9 A. Mickie Funke and Larry Hamilton did.

10 And they watched me as I tried to
11 gather my things and then they told me that I had
12 to hurry because they had a meeting to go to and
13 that I needed to get this done.

14 And they started taking things off of
15 my counter and off of my walls and putting them
16 in boxes.

17 They wouldn't let other employees come
18 in to console me except that Joni pushed past
19 Larry and came in and gave me a hug; and so did
20 Rondo Winters.

21 They gave me 30 minutes to clean out 21
22 years. 21 years. 30 minutes.

23 Q. Did they tell you that that's the time
24 that you had allotted to you?

25 A. No. But that's what they gave me and

1 they told me I had to hurry.

2 Q. Were you in tears, as you are now?

3 A. No, not at first. I kept it together.

4 I even told Larry Hamilton and Mickie Funke that

5 I was going to be okay.

6 But I'm not okay.

7 Q. I can see that.

8 After gathering your things, having

9 been accompanied by Ms. Funke and Mr. Hamilton,

10 which I understand took, approximately, 30

11 minutes with them assisting you, then were you

12 offered a ride home? Or was any other assistance

13 offered to you?

14 A. I was offered a ride home.

15 Q. Okay. And did you accept that?

16 A. No.

17 Q. And I take it at that point, then, you

18 did leave.

19 A. I did leave.

20 Q. Did you have follow-up discussions with

21 anybody at Fall River with respect to collecting

22 personal items or any other issues?

23 A. Yes. In fact, that day, I went to my

24 husband to tell him again what had happened

25 because he called when I was cleaning out my

1 office.

2 And on my way to see him, I remembered
3 that I wanted -- or that I should have gotten my
4 manuals from CLCP.

5 And, so, when I got to my husband, I
6 used his cell phone and I called back to the
7 office and asked to speak to Larry and told him
8 that I wanted those books and asked him if I
9 could come back and get them.

10 And he said: Yes, but not right now.
11 We're going into a meeting.

12 And I knew that the meeting was at 3:00
13 o'clock and it was only 2:00-something.

14 And I said: I'm just in town. I can
15 be right there. I'll come now to get them.

16 And, so, I went back to the office and
17 I entered through the front door and I asked the
18 receptionist to call Larry Hamilton to the front.

19 And she said: Just go get him.

20 I said: I can't. I don't work here
21 anymore.

22 And, so, Larry came to the front after
23 she called him and he escorted me to my former
24 office and I collected those three books.

25 And, later, I talked to individuals to

1 try and get files from my computer that were
2 pictures... personal pictures.

3 Q. Were you able to do that?

4 A. Not all of them, but I did get some.

5 Q. Would you like to still do that?

6 A. No. At this point, no.

7 Q. What was Mr. Hamilton's demeanor this
8 day through all of this? Did he try to comfort
9 you at all?

10 A. No.

11 Q. How would you describe his demeanor?

12 A. Nervous, anxious, wanting me to get
13 out.

14 Q. What about Ms. Funke?

15 A. I think she felt sorry for me.

16 Prior to being informed that I was
17 being fired, I went to Bryan's office to get my
18 Supervisor because an employee had been injured
19 and I didn't know how bad.

20 And they didn't want me to interrupt
21 their meeting and they were angry, gave me angry
22 looks when I opened the door anyway and told them
23 about it and they ignored it and he shut the door
24 and then went back to the meeting.

25 And it was, approximately, 15 minutes

1 guess you could say I had interaction with the
2 receptionist, Kathy Bollinger, who happens to be
3 my sister-in-law.

4 And when I was entering the building,
5 three individuals pulled up for the meeting at
6 3:00 o'clock. And that was J.R. Wood. Maybe it
7 was four. J.R. Wood; Amy Flores, I think; Wendy
8 Reece; and Jeff Hastings.

9 And I believe that I told them I didn't
10 work there anymore, but they didn't believe me.

11 Q. So, all of this happened over the span
12 of about an hour after lunch that day.

13 A. I guess it was about that long. It
14 wasn't very long.

15 Q. Okay.

16 (Exhibit No. 18 marked.)

17 BY MR. BARRETT:

18 Q. Exhibit 18, can you confirm for me,
19 please, this was the Separation Agreement and
20 Release papers that you referenced in your
21 previous testimony that was provided to you by
22 Bryan Case and Larry Hamilton and Mickie Funke in
23 conjunction with their communicating to you that
24 your job was being eliminated and you were being
25 let go.

1 version was mailed to you, is your testimony?

2 A. Yes.

3 Q. Did you have any other discussions with
4 Mickie Funke during this visit to your home? Was
5 it a quick visit?

6 A. It was a quick visit. She didn't even
7 come into my home. She just stood out on the
8 porch. And there was not a lot of discussion.

9 Q. Did you invite her in and she declined?

10 A. Yes.

11 Q. And, so, she was just there, basically,
12 to drop off the revised version and then to
13 leave?

14 A. Yes.

15 (Exhibit No. 19 marked.)

16 BY MR. BARRETT:

17 Q. I've handed you Exhibit 19.

18 This is an e-mail exchange that you had
19 with Mr. Case after you had been let go in August
20 of 2009.

21 On the second page of this, which is
22 the initiating correspondence and e-mail that you
23 sent to Bryan on August 14 of 2009, you make the
24 comment that: During our last conversation, you
25 said you would write me a recommendation letter.

1 Would you, please, do that, is the question you
2 put to him.

3 So, this last conversation refers to
4 what?

5 A. July 28th.

6 Q. So, that was something else, then, that
7 was conveyed to you at that meeting, the fact
8 that he would write a recommendation letter?

9 A. Yes.

10 Q. Did anybody else in that meeting
11 similarly make an offer to that effect?

12 A. I don't remember them making that
13 offer, but I did ask for some later.

14 Q. His response there speaks for itself.

15 And did he, in fact, provide you with a
16 letter of recommendation?

17 A. Yes.

18 Q. I have seen two. I've seen his and
19 I've seen one from Mickie Funke, as well. And
20 did you ask her separately for one?

21 A. Yes.

22 Q. Did you do that also by e-mail or when
23 she visited or when?

24 A. E-mail, I believe. I can't say for
25 sure.

1 Q. So, this note would have been put on a
2 blank report that you were providing to him as
3 the report to use with respect to this spill. It
4 was that issue.

5 A. That's correct. If you'll notice, it
6 was not filled out until 7/28 of '09. That's the
7 day I was fired.

8 I did not see this before I was fired.

9 Q. When did you make the note?

10 A. I don't remember. Probably back after
11 the first of July when I brought it to Larry's
12 attention initially.

13 Because I mentioned that I e-mailed the
14 trainer from CLCP for further clarification on
15 the 25-gallon rule.

16 I don't know if he responded or not.
17 He hadn't responded to me before I was fired.

18 Q. So, that's an e-mail we should be able
19 to locate, I hope.

20 A. If it exists, yes, you should.

21 Q. Okay. Was the oil spill protocols and
22 reporting procedures, was that under your
23 responsibility as the Safety Director?

24 A. Yes, because I was responsible for the
25 PCB records and the reporting of PCB spills. So,

1 yes.

2 Q. So, making sure that Fall River
3 Management was aware of any spill that, in your
4 view, needed to be reported by law, that was part
5 of your job responsibility as Safety Director,
6 correct?

7 A. Correct. And when he brought me the
8 oil samples, he didn't tell me there had been a
9 spill. I had to deduce that from overhearing
10 conversations later on.

11 Larry didn't even bring it to my
12 attention after he and David had discussed it.

13 Q. What was their response, if any, when
14 you took issue with the fact that this may be
15 reported?

16 A. That's when David said: I was only
17 doing what my Supervisor said. Larry said it
18 wasn't enough.

19 Q. But Larry, at some point, acquired this
20 form from you.

21 So, it was his intent to report the
22 spill after all, correct?

23 A. This wasn't until July. It should have
24 been reported in May when it happened.

25 And I took this to him after I had

1 Q. I've handed you Exhibit No. 25.

2 This is another e-mail similar to the
3 one that we reviewed two exhibits ago, again,
4 from Mickie Funke to -- it looks like all the
5 employees at Fall River.

6 A. Second row from the bottom, in the
7 middle.

8 Q. Thanks again.

9 You're a recipient. Do you remember
10 ever receiving this e-mail?

11 A. Yes. And I paid particular attention
12 to the sexual harassment document and the anti-
13 harassment document because I had --

14 Q. And --

15 A. I'm sorry.

16 Q. I'm sorry. Go ahead.

17 A. Because I had been involved in an issue
18 with sexual harassment and I had reported an
19 instance on a couple of different occasions. So,
20 I paid particular attention to that one.

21 And then I had been trying to get them
22 to train on harassment for awhile because of some
23 of the other things that had happened.

24 And I didn't pay much attention to the
25 at-will policy.

1 Q. Did you look at it at all?

2 A. I don't remember for sure.

3 Q. I saw evidence that training had been
4 conducted by Mickie Funke with respect to sexual
5 harassment. It's contained within the minutes of
6 a few of the Safety Meetings in 2009.

7 Is that correct, that the training
8 actually did occur with respect to sexual
9 harassment?

10 A. I believe that she followed up on the
11 training that was given in January by a
12 representative from ISU at our all-employee
13 meeting that was held in West Yellowstone,
14 Montana on Martin Luther King Day.

15 Q. Were there any active issues with
16 respect to sexual harassment?

17 I did see the reports that you made in
18 the file.

19 I don't see any particular need to
20 introduce them as exhibits?

21 But were there any ongoing harassment
22 issues in 2008, 2009?

23 A. When you say "ongoing," that were under
24 investigation? Is that what you mean?

25 Q. With respect to you.

1 A. It was Joni.

2 Q. Did she forward you the copy of what
3 was actually sent out?

4 A. No, I don't believe so.

5 Q. So, this was something that she
6 verbally told you?

7 A. Uh-huh. (Yes)

8 MR. OHMAN: Yes?

9 THE WITNESS: Yes.

10 MR. OHMAN: You've been doing very
11 well.

12 MR. BARRETT: Yes, you have.

13 BY MR. BARRETT:

14 Q. Did you ever threaten to go to OSHA or
15 any other regulatory authority with the safety
16 issues that you were observing during your period
17 of time that you were the Safety Director?

18 A. No, I did not.

19 Q. Okay. Is there a reason why?

20 A. I felt loyal to my company. I felt
21 loyal because I had been there for 21 years and I
22 didn't want them to get in trouble and I knew
23 that they would.

24 However, in reading the OSHA
25 Regulations, as an employee, it was my

1 A. Yes, I did.

2 Q. Was this part of the training that you
3 provided to employees of Fall River?

4 A. Yes. The outside employees only.

5 Q. And when would you have given this
6 training?

7 A. It was not long after I started.

8 So, it was sometime in 2008, maybe in
9 April or May.

10 Q. And then one question with respect to
11 an allegation that you have made in this case.

12 You make a reference to the Seniority
13 Policy, which we've discussed.

14 You make reference to a "For Cause
15 Agreement," an understanding that you would not
16 be terminated except for cause.

17 A. That was the impression I was given
18 when I was hired, that if I did my job well, I
19 could be a long-term employee there. I could
20 retire from there and be part of that employee
21 family for a great number of years.

22 Q. Do you remember specifically who gave
23 you that impression?

24 A. My Supervisor, when I was very first
25 hired, which was Valene Jones; and also the

1 Manager at the time whose name was George Mangum.

2 Q. When you use words like "I was given
3 the impression" as opposed to "I was told," that
4 requires follow-up from me and you can understand
5 why.

6 I mean, you can have an impression and
7 it can be subjective. You may never have been
8 told something. It's just something that you
9 felt based on just a feeling.

10 Is that what we're talking about?

11 A. No, I was told that at the beginning.
12 I remember -- not clearly, but I remember having
13 that discussion with Valene Jones and Mr. Mangum.

14 And then throughout the years, because
15 no one left Fall River, the rate of people to
16 leave was next to nothing. I mean, people rarely
17 left.

18 And, so, afterwards I guess I gained
19 the impression that I would be there for a long
20 time because people retire from there.

21 Q. Were you ever provided anything in
22 writing that stated that your employment would
23 continue except for "cause"?

24 A. They gave me a lot of policies when I
25 was very first hired and I still do not have

1 copies of those.

2 I believe that there was a policy in
3 effect at that time, which was clear back in
4 1988, that said we would not be fired except for
5 "cause."

6 Q. Have you seen that policy in your
7 review of any of the materials?

8 A. No.

9 MR. BARRETT: I think we're done. No
10 further questions from me.

11 MR. OHMAN: I have no questions at this
12 time.

13 We would like the opportunity to review
14 and sign.

15 And we would like an E-tran and
16 condensed.

17 (The deposition concluded at 3:24 P.M.)

18 -ooOoo-

19

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24

25

REPORTER'S CERTIFICATE

STATE OF IDAHO)
COUNTY OF BONNEVILLE) ss.
)

I, Mary L. Stockton, CSR and Notary Public in and for the State of Idaho, do hereby certify:

That prior to being examined SUZETTE BOLLINGER, the witness named in the foregoing deposition, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true and verbatim record of said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 15th day of March 2010.

Mary L. Stockton
Idaho CSR No. 746,
Notary Public in and for
the State of Idaho.

My Commission Expires: 11-10-10

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing AFFIDAVIT OF BRYAN CASE IN SUPPORT OF DEFENDANT'S RULE 56(b) MOTION FOR SUMMARY JUDGMENT on the following:

John M. Ohman
cobjmo@ida.net
Cox, Ohman & Brandstetter, Chartered
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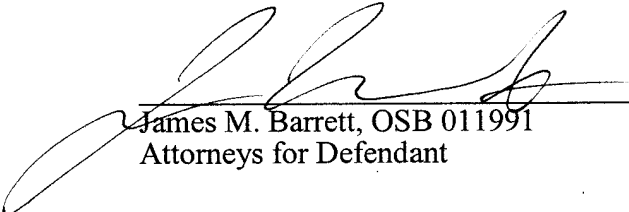
Attorney for Plaintiff

by electronic transmission and U.S. First-Class Mail a true and correct copy thereof to said parties on the date stated below.

In addition, a courtesy copy of this document was sent by U.S. First-Class Mail to the following on the date stated below:

The Honorable Darren B. Simpson
District Judge
501 North Maple, #205
Blackfoot, ID 83221

DATED this 19th day of April, 2010.

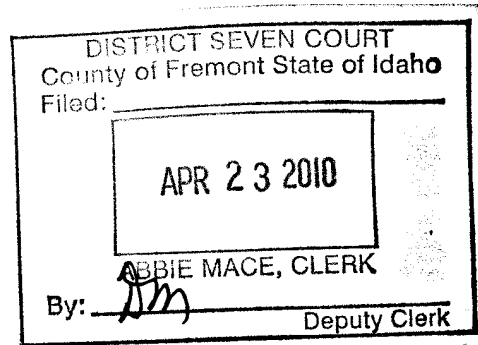


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923617/1/JMB/103889-0003



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Attorneys for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho corporation,

Defendant.

Case No. CV-10-36

**AFFIDAVIT OF BRYAN CASE IN
SUPPORT OF DEFENDANT'S RULE
56(b) MOTION FOR SUMMARY
JUDGMENT**

AFFIDAVIT OF BRYAN CASE - Page 1

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STATE OF IDAHO)
) ss.
County of Madison)

I, Bryan Case, swear and affirm as follows:

1. I reside in Rexburg, Idaho. I am employed as the General Manager at Fall River Rural Electric Cooperative, Inc. ("Fall River Electric" or the "Cooperative"). I make this affidavit in support of Defendant's Rule 56(b) Motion for Summary Judgment in the above-captioned matter. I have personal knowledge of the matters set forth herein and am competent to testify to them.

2. Fall River Electric is a non-profit, member-owned electric cooperative cooperation headquartered in Ashton, Idaho. It employs a workforce of approximately 55 and provides electric utility service to members in eastern Idaho, Montana, and Wyoming.

3. Fall River Electric hired Bollinger as a cashier/receptionist in its Ashton headquarters in October 1988. In 1993, Bollinger was reassigned to the position of Energy Auditor, where her responsibilities included conducting energy analyses for Fall River Electric's members, managing conservation programs, and overseeing the cooperative's cell phone program.

4. Bollinger continued in the position of Energy Auditor until February 2008. In 2006, Bollinger also assumed the position of Member Services Representative.

5. In February 2008, Bollinger was promoted to Safety & Loss/Facility Director, a position that she held until her layoff in July 2009.

6. At all times, Bollinger performed her duties in a satisfactory manner.

AFFIDAVIT OF BRYAN CASE - Page 2

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7. At no time did Bollinger enter a written employment agreement with Fall River Electric for a fixed term.

8. At the time Bollinger was hired in 1988, Fall River Electric maintained a written “for-cause” termination policy for regular employees. An exception existed in the event of layoffs because of lack of work. Attached as EXHIBIT 1 is a true and correct copy of the “for cause” termination policy in effect at the time Bollinger was hired.

9. In October 2004, Fall River Electric adopted a “Work Standards and Personal Conduct Policy.” Attached as EXHIBIT 2 is a true and correct copy of that policy.

10. In March 2009, Fall River Electric adopted an “Employment-At-Will” policy. Attached as EXHIBIT 3 is a true and correct copy of that policy.

11. The Employment-At-Will Policy was emailed to all Fall River Electric employees on April 6, 2009, including Bollinger. Attached as EXHIBIT 4 is a true and correct copy of that email.

12. Prior to 2008, Fall River Electric’s safety programs were the responsibility of its Operations Manager. In late 2007, Fall River Electric created a new position of Safety & Loss/Facility Director that would, among other things, assume responsibility and oversight of the Cooperative’s safety programs and report to the Operations Manager.

13. Bollinger and three other men applied for the position of Safety & Loss/Facility Director when the opening was posted. After an interview process, Fall River Electric selected Bollinger for the position and promoted her effective February 26, 2008. At that time, she began reporting to the Operations Manager, Larry Hamilton.

14. Bollinger's duties and responsibilities as the Safety & Loss/Facility Director were described in a written position description that Fall River Electric provided to her upon her promotion. Attached as EXHIBIT 5 is a copy of the position description produced by Bollinger in this lawsuit.

15. With respect to safety, Bollinger was charged with implementing and carrying out state and federal laws, rules, and regulations. Her specific duties and responsibilities included coordinating and directing monthly safety meetings; overseeing safety programs required by the Occupational Safety and Health Administration ("OSHA"); maintaining various records required to demonstrate Fall River Electric's compliance with safety rules and regulations; following up on accident investigations, "near misses," and hazard warnings; purchasing safety related equipment; and performing safety and compliance inspections.

16. It was also Bollinger's duty and responsibility to bring to the attention of Fall River Electric's management any failure by the Cooperative to comply with any applicable safety law, rule, or regulation.

17. With few exceptions, Fall River Electric took remedial action on every safety issue raised by Bollinger during her tenure as Safety & Loss/Facility Director, albeit not always as fast as Bollinger would have preferred. In fact, notwithstanding severe budget constraints, Fall River Electric spent more on safety in 2009 than in any recent year.

18. Fall River Electric has a long history of focusing on safety. For example, the Cooperative requires its employees to attend monthly safety meetings and conducts annual peer safety reviews coordinated through the Idaho Consumer-Owned Utilities Association ("ICUA"). In addition, the Cooperative's insurance provider, Federated Insurance, conducts annual safety

AFFIDAVIT OF BRYAN CASE - Page 4

inspections, and the Cooperative participates on the ICUA Safety Advancement Program. The Cooperative also contracts with the Montana Electric Cooperative Association to have safety professionals train Fall River Electric's staff regularly, and, in 2009, Fall River Electric hired IBEW to train staff on safe practices for working on energized lines. As a result of its staff's safety efforts, the Cooperative received an award in 2006 for an outstanding record of 535,336.75 hours worked with no lost time due to an accident. The Cooperative continues to stress safety and has achieved 270,866 hours with no lost time accidents as of March 1, 2010.

19. The United States economy entered a prolonged and severe recession in 2008 that had a substantial and sustained negative impact on Fall River Electric's business. The Cooperative addressed the impact of the recession in a number of ways, including the implementation of cost-cutting and cost-saving efforts and reducing its workforce through offers of early retirement. On May 11, 2009 Fall River offered an early retirement package to employees who had attained a combined years of employment and years in age totaling at least 80. The early retirement package included company-subsidized medical coverage for 5 years beyond the date of retirement or the monetary equivalent, 3 months base pay, and payment of all accrued vacation and sick leave. Five employees choose to participate in the plan. However, even with those measures, by mid-2009, Fall River Electric was faced with the need to take additional steps to bring its staffing in line with reduced workloads.

20. On July 27, 2009, Fall River Electric's Board of Directors approved a reduction in force, eliminating five positions that affected five employees, one of whom was Bollinger.

21. I made the recommendation of which positions to eliminate, based on the opportunities available for restructuring and consolidation. For example, by consolidating the

AFFIDAVIT OF BRYAN CASE - Page 5

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Bollinger's position as Safety & Loss/Facility Director, because it was a new position whose duties and responsibilities could be reabsorbed by the Operations Manager, who previously had been responsible for the oversight and administration of Fall River Electric's safety programs.

22. Bollinger was laid off on July 28, 2009. She was called into a meeting with myself, Larry Hamilton, and Mickie Funke and informed of her termination. She was provided a severance package to take home and review, and I offered to write her a letter of recommendation. Attached as EXHIBIT 6 is a true and correct copy of the severance package provided to Bollinger.

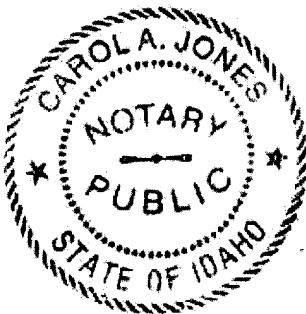
23. In the weeks subsequent to her layoff, Bollinger asked for and received letters of recommendation from myself, Larry Hamilton, Mickie Funke, and others.

Bryan Case
Bryan Case

SUBSCRIBED AND SWORN TO before me this 15 day of April, 2010.

Carol A. Jones
Notary Public for Ashton, Idaho

My Commission Expires: 11/8/2014



AFFIDAVIT OF BRYAN CASE - Page 6

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FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

GENERAL POLICY NO. 615.0

SUBJECT: TERMINATION OF EMPLOYMENT

I. PURPOSE:

Although it is desirable for the continuity of operation of the Cooperative to have as few changes of personnel as possible, it must be recognized that such changes will occur. The purpose of this policy is to detail the special circumstances pertaining to the termination of employment with the Cooperative of its employees.

II. POLICY

It shall be the policy of Fall River Rural Electric-Cooperative, Inc. to make termination payments to employees leaving the employ of the Cooperative according to the provisions given in this policy.

III. RESPONSIBILITY:

The General Manager

IV. PROVISIONS:

The following provisions and procedures shall apply to this policy:

A. Resignations

Regular and probationary employees shall give the Cooperative a minimum of two weeks advance notice in the event they decide to terminate their employment with the Cooperative. Voluntary terminations, when such notice has been given, will receive a cash payment for accrued and unused vacation leave credits, up to a maximum limit of credits. Should the termination be within the first year the cooperative will not pay any moving expenses incurred when the employee was hired.

B. Lay-Off of Employees

If, because of lack of work, it is necessary to lay-off a regular employee, he (she) will be given:

1. Two weeks notice or the cash equivalent
2. A cash payment for any accrued and unused vacation leave credits up to the maximum number of credits
3. Priority in consideration for any subsequent vacancy for which he (she) is qualified
4. Credit for prior service toward seniority and other length of

Case Affidavit
EXHIBIT 1 Pg. 1 of 2

FALL RIVER 00285

service benefits upon subsequent re-employment

- C. Seniority shall terminate for any of the following reasons:
- Voluntary quitting
 - Discharge for cause
 - Absence from work for more than two days, except for authorized sickness or granted leave of absence
 - Continuous lay-off for a period in excess of twelve months duration
 - Failure to report for work upon recall within four days after notification by letter or telephone to the last address furnished in writing by the employee to the Cooperative

D. Discharge of Employees

If it becomes necessary to discharge an employee, he (she) shall be informed in writing of the action and of his (her) rights and privileges, subject to the following conditions

1. New Employees

The Cooperative reserves the right to discharge a probationary employee, with or without cause, at any time up to the time that he (she) has completed six months employment if paid on an hourly basis, or twelve months if paid on a salaried basis, but with the following provisions:

- Unless he (she) deliberately disregards Cooperative regulations and his (her) continued employment would be to the detriment of the Cooperative, two weeks' notice or the cash equivalent will be given

2. Regular Employees

A regular employee may be discharged only for cause and shall receive:

- Two weeks' notice or the cash equivalent
- The cash equivalent for accrued and unused vacation leave credits up to the maximum number credits

D. Approvals

The General Manager shall approve the amounts to be paid to employees upon termination

This policy supersedes any existing policy which may be in conflict with the provisions of this policy.

DATE ADOPTED: March 14, 1977
DATE EFFECTIVE: March 14, 1977

APPROVED BY THE BOARD OF DIRECTORS

Vernon Christoffersen
Vernon Christoffersen President

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

GENERAL POLICY NO. 614.1

SUBJECT: WORK STANDARDS AND PERSONAL CONDUCT

I. PURPOSE:

Standards of business and personal conduct are important to the success of the Cooperative and each employee. Enforcement of these standards will not only contribute to the continued economic viability of the Cooperative but also will help make the Cooperative a better and safer place to work.

II. POLICY:

- A. All employees are expected to abide by applicable federal and state laws and regulations in the performance of their job duties, as well as other commonly accepted standards of business and personal conduct. These standards include honesty, integrity, and mutual respect for fellow employees, supervisors, managers, and customers. Employees are expected also to observe and comply with all policies and performance standards that may be established by the Cooperative.
- B. Violation of these standards may result in discipline up to and including discharge, depending on the circumstances involved. It would be impractical and perhaps even impossible to list all possible instances of potential work-related misconduct or performance issues. However, listed below are several examples or benchmarks of the kinds of misconduct or performance problems that may result in discipline. These examples are intended as further guidance to managers, supervisors, and employees regarding the Cooperative's general standards and expectations described above.
1. Dishonesty in any form, including falsification of records or reports or providing misleading information.
 2. Theft or unauthorized possession of property belonging to the Cooperative, other employees, or customers.

3. Damage, loss, or destruction of Cooperative property or property belonging to customers or other employees due to willful, reckless, careless, or negligent acts.
4. Unauthorized use or misuse of Cooperative time, material, equipment, property, or confidential information.
5. Being under the influence of, possessing, or using alcohol or other intoxicants or illegal substances while on duty.
6. Insubordination, failure to perform assigned work, or neglect of duties.
7. Poor performance, failure to meet job requirements, inefficient or inadequate completion of assigned duties, sleeping or loafing on the job.
8. Failure to observe safety rules and regulations.
9. Unexcused or excessive absenteeism or tardiness.
10. Failure to work courteously and harmoniously with other employees, customers, and other persons doing business with the Cooperative.
11. Fighting, horseplay, or other disorderly conduct that may endanger the well being of other employees, customers, or the operation of the Cooperative.
12. Threatening, harassing, intimidating, or coercing others; using profane, obscene, or abusive language; or interfering with the duties or performance of others.
13. Other conduct that could adversely affect the job performance, effectiveness, or safety of the employee or others; or the Cooperative's effectiveness, interests, or regard in our industry or service area.

These examples are not all inclusive and do not reflect all possible circumstances that may result in discipline. Specific questions about the application of this policy to any particular situation should be direct to your manager.

C. Failure to observe Cooperative policies, rules, and standards, as described above, may result in disciplinary action including counseling, warnings, suspension, or discharge depending on the circumstances involved.

1. The Cooperative's discipline policy is not intended to be punitive, but to help employees identify and correct work-related problems and deficiencies. The

Cooperative normally will initially warn employees for *minor* infractions with limited risks of harm to personnel, property, or other interests of the Cooperative before to taking more severe disciplinary action.

Serious misconduct with actual or potential risk of *significant* damage or harm to employees, property, or other Cooperative interests may result in severe disciplinary action or discharge without prior warnings.

2. The Cooperative will endeavor to fairly and objectively evaluate the relevant facts and evidence prior to assessing disciplinary action. Where appropriate, the Cooperative will conduct a formal investigation and/or hearing to adequately evaluate the relevant facts. Employees ordinarily will be given an opportunity to explain or defend their actions prior to any disciplinary action.

However, there may be circumstances, where immediate suspension from work may be appropriate, pending further investigation of the facts. Such cases may involve serious employee misconduct, or where risks or personal injury or property damage are present, or where necessary to adequately gather and investigate the facts.

D. Guidance regarding the Cooperative's disciplinary process:

All instances of possible disciplinary action will be handled on an individual basis, taking into account the nature of the offense, the actual and/or potential (reasonably foreseeable) harm or damage involved, and the employee's prior work record.

1. **Counseling.** In most cases of minor misconduct or poor performance, the supervisor will initially discuss the inappropriate behavior or performance problem with the employee. The counseling is intended to make sure the employee understands what is expected, including any applicable rules or standards. The employee will be expected to agree to make necessary improvements or corrections.

The counseling will be documented in writing in the employee's file and the employee will receive a copy.

2. **Warning.** If the problem persists or if other problems develop, the supervisor will ordinarily talk with the employee again about his/her deficiencies and issue a written disciplinary warning to the employee.

The warning will describe the problem, specify the improvement or correction that is expected, establish a time period for improvement (if appropriate), and advise the employee that more serious discipline will occur, if the problem is not corrected. The employee will be given a copy of the written warning and a copy of the warning will be placed in the employee's personnel file.

3. **Final Warning/Suspension.** If the employee's misconduct or performance problems are not corrected, the next step ordinarily would be a frank discussion between the supervisor and employee and a final warning advising the employee in writing that if the problems are not corrected, he/she may be discharged.

In cases where serious misconduct may be involved, the Cooperative may suspend an employee at this step without pay, generally for up to five (5) days depending on the circumstances. The suspension is intended to (1) Give the employee time to consider whether to voluntarily leave employment with the Cooperative or to agree to perform his or her job duties in compliance with the expectations and standards of the Cooperative, and (2) Give management time to review all the facts and consider possible courses of action regarding continued employment of the suspended employee.

4. **Discharge.** When the Cooperative's efforts to correct the employee's deficiencies have failed or in cases of serious misconduct, the employee will be discharged.

IMPORTANT: Management may modify or skip any of the above discipline steps taking into account the seriousness of the infraction, or any mitigating or aggravating circumstances, or the employee's past work record.

- D. This policy is not intended nor should it be implied to create an employment contract or a guarantee of employment. Employment with the Cooperative is voluntary and may be terminated by the employee or the Cooperative at any time for any lawful reason.



III. RESPONSIBILITY

- A. Supervisors are expected to review all work performance or misconduct problems within their areas of responsibility with their department manager.

Department managers are responsible to review all disciplinary matters involving chronic performance problems or serious misconduct, including recommendations for appropriate action, with the general manager.

Final authority regarding the discharge of any employee rests with the general manager after review of all the pertinent facts and recommendations from appropriate department managers and supervisors.

B.

1. Any employee who believes disciplinary action taken is unjust under this policy may have the matter reviewed by submitting a written request for reconsideration with his/her department manager within one week of written notification of the disciplinary action. Such request for reconsideration should include the basis for the request including any evidence the employee may have to support the request.
2. The department manager will review all pertinent and available evidence and any recommendations from the employee's supervisor. The department will prepare his/her own written recommendation and submit it to the general manager together

with all relevant back-up information and statements.

3. After reviewing the department manager's recommendations, the general manager at his/her discretion may:
 - a. Schedule a hearing with the employee, his/her supervisor, his/her department manager, and any witnesses whose testimony can amplify or clarify the circumstances of the case
 - b. Decide against reconsideration.
4. The general manager will issue a letter outlining his findings and decision regarding the appeal. The general manager's decision shall constitute the final action of the Cooperative, and will be transmitted in writing to the employee, his/her supervisor, and all other personnel involved. A copy will be placed in the employee's file.

IV. PRIMACY OF POLICY:

This policy supersedes any existing policy that may be in conflict with the provisions of this policy. This policy does not represent a contract between the employer and employee, and the employer herein may change the policies alone and without notice.

APPROVED BY THE BOARD OF DIRECTORS


Ryan Kearsley, President

DATE APPROVED: October 18, 2004

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

GENERAL POLICY NO. 601.0

SUBJECT: EMPLOYMENT-AT-WILL

I. POLICY:

It shall be the policy of the Board of Directors of Fall River Rural Electric Cooperative, Inc., to adopt such personnel policies as will assure the Cooperative's ability to attract and retain a quality workforce of skilled and motivated employees who are committed to the ongoing success and vitality of the Cooperative.

More specifically, policies will be adopted with the intent to encourage dedicated and loyal service to the Cooperative and its customers and to reward employees fairly and consistently according to generally accepted job-related standards. Factors that are important to the effective operation of the Cooperative include: dedicated and loyal service, job knowledge and skills, job effectiveness, continual learning and improvement, and teamwork on the part of all employees.

Further, under these policies, it is essential that all relationships and actions within the Cooperative be guided by principles of honesty, integrity, legal compliance, and mutual respect among all employees and managers.

II. PURPOSE:

All employees who do not have a separate, individual written employment contract for a specific fixed term of employment are employed at the will of the company and may be terminated by the company at any time, for any reason, with or without notice, except as prohibited by law or the express provisions of any applicable labor agreement. Any contract or agreement that specifies a fixed term of employment must be approved by the board of directors, and signed by the president or general manager of the company.

III. PROVISIONS:

A. Employees who do not have a separate, individual written employment contract signed by the President or General Manager of the Cooperative are employed at the will of the Cooperative and are subject to termination at any time, for any reason, with or without cause or notice, except as prohibited by law or by the express provisions of any applicable labor agreement. Similarly, employees may terminate their employment at any time and for any reason.

B. The Cooperative's Board of Directors is the only body authorized to override the Employment-at-Will provision. No Cooperative representative is authorized to modify the policy for any employee or applicant for employment or to enter into any agreement, oral or written, contrary to this policy. Supervisory and management personnel should not make any representation to employees or applicants concerning the terms or conditions of

conditions of employment with the Cooperative that are inconsistent with this policy.

C. This policy will not be modified by any statements contained in this or any other employee handbooks, employment applications, recruiting materials, memoranda, or any other materials provided to employees in connection with their employment. None of these documents, whether singly or combined, will create an express or implied contract concerning any terms or conditions of employment.

D. Nothing contained in this manual, employee handbooks, employment applications, Cooperative memoranda, or other materials provided to employees in connection with their employment require the Cooperative to have just cause in order to terminate an employee or otherwise restrict the Cooperative's right to terminate any employee at any time or for any reason. Provided, however, that the Cooperative will not terminate any employee for reasons that violate state or federal law, or the express provisions of any applicable labor agreement. ★

E. Statements of specific grounds for termination set forth elsewhere in this manual are not all-inclusive and are not intended to restrict the Cooperative's right to terminate at will.

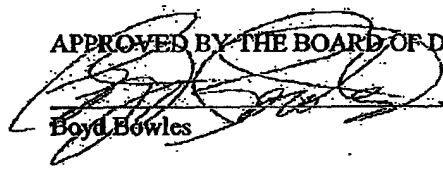
IV. RESPONSIBILITY:

The General Manager is responsible for the administration of this policy. Fall River Electric Rural Electric Cooperative, Inc.'s Board of Directors is the only body authorized to override the Employment-at-Will provision. No company representative is authorized to modify this policy for any employee or applicant for employment or to enter into any agreement, oral or written contrary to this policy. Supervisory and management personnel should not make any representation to employees or applicants concerning the terms or conditions of employment with Fall River Electric that are inconsistent with this policy

V. PRIMACY OF POLICY:

This policy supersedes any existing policy that may be in conflict with the provisions of this policy. This policy does not represent a contract between the employer and employee, and the employer herein may change the policies alone and without notice. ★

APPROVED BY THE BOARD OF DIRECTORS


Board President
Boyd Bowles

DATE EFFECTIVE: March 30, 2009

Shemia Fagan

From: Mickie Funke
Sent: Monday, April 06, 2009 3:38 PM
To: Aaron Kearsley; Amanda DeRito; Amanda Shurtz; Amy Flores; Amy Marsden; Ben Bollinger; Billy Joe Angell; Brad Amen; Brand Hathaway; Brandy Burlage; Brent Garnett; Brett Eckman; Brian Curr; Bryan Case; Carol Jones; Cathy Dixon; Darin Hansen; Dave Peterson; Dave Trosen; David Goebel; David Stone; Dee Reynolds; Derek Nedrow; DJ Crist; Dustin Bowersox; Eric Oberhansley; James Nash; Jan Dean; Jed Parkinson; Jed Quirt; Jeff Beard; Jeff Hastings; Jeff Jacobsen; Jeremy Banta; John Grube; Joni Amen; JR Wood; JT Hill; Kathy Bollinger; Kerry Huntsman; Kim Niendorf; Kory Maupin; Kyle Tonks; Larry Hamilton; Larry Stone; Laurice Bittner; Layne Armstrong; Leonard Hull; Linda Boggetti; Matt Lerwil; Matthew Olivas; Mickie Funke; Missi Hathaway; Misti Christensen; Patty Nedrow; Randy Farmer; Randy Wakefield; Rayla Hathaway; Rondo Winters; Roz Anderson; Sandi Bowersox; Shannon Hill; Stan Hansen; Suzette Bollinger; Tim Jenkins; Trent Yancey; Tye Teeple; Tyler Cude; Wendi Celino
Subject: policies approved by Board in March meeting
Attachments: 600.0 Purposes, Development, and Revision of Personnel Policies.doc; 601.0 EMPLOYMENT-AT-WILL draft Rigby.doc; 623.0 SEXUAL HARASSMENT.doc; 625.00 ANTI-HARASSMENT.doc; GP415.1 Use of Cooperative Tools, Equipment, Facilities.doc

← ★
← ★

Mickie Funke
Fall River Rural Electric Cooperative
1150 N 3400 E
Ashton, ID 83420

(208) 652-7431 ext 7004
(208) 652-7825 fax

mickie.funke@fallriverelectric.com

2/23/2010

Fall River Rural Electric Cooperative, Inc.

Position Description

POSITION TITLE: Safety & Loss / Facility Director **DATE:** January 2008
REPORTS TO: Operations Manager **LOCATION:** Reports to Ashton
Coordinates with all employees Office
DEPARTMENT: Operations

I. SUMMARY OF POSITION:

- 1- Organizes and directs the Cooperative's safety programs. Implements policies and procedures to assure Safety Loss Control Policies are complied with. Responsible for safety records and accident reports, etc. Coordinates with Cooperative and other Safety Organizations and Committees. Reports to Operations Manager.
- 2- Organizes and directs the maintenance of the Cooperatives physical facilities. Assures the buildings and yards are maintained and improvements made. Provides reports and records and makes recommendations for expense and capital budgets.

II. 1- DUTIES AND ACCOUNTABILITIES (End Results Expected)

SAFETY & LOSS COORDINATOR:

Coordinating and directing regular monthly safety meetings including setting monthly agenda and annual schedule, meeting minutes, topics, and trainers. Participating with the ICUA Safety Advancement Program and directs the Safety Incentive and Safety Compliance Committees. Directs Emergency Action, Security Programs, Fire Extinguisher, and other OSHA Programs

Maintains records including safety data, PCB records, OSHA reporting, Hazardous Communication Program- MSDS records, provide reports for compliance records.

Provide monthly reports to Board of Directors. Assists with compliance and outside inspections- Federated, METSpool, ICUA, etc.

Responsible for near miss, accident investigation and hazard warning follow up. Purchasing safety related equipment, PPE, and other (Flagger, AED, FR Cloth's). Maintains test procedures and records for Safety Compliances, Rubber Goods, Hot

*Federated
Compliance
Thing*

Case Affidavit
EXHIBIT 5 Pg. 1 of 3

Sticks, Chains and Slings. Performs Safety and Compliance inspections of all equipment and vehicles. Implements and Carries out State Federal Laws, rules, regulation.



Provides Safety training to the general public including groups and schools

2- DUTIES AND ACCOUNTABILITIES (End Results Expected)

FACILITY DIRECTOR:

Administers and directs contracts, contractors for maintenance of buildings, houses and yard facilities. Assures needed repairs are completed in professional timely manner. Keeps records of facility maintenance and improvements. Recommends and provides items and costs for budgeting. Make recommendations for new and improved facilities. Provides water testing reports or other governmental requirements.

III. INTERPERSONAL SKILLS:

Must have the ability to lead and motivate others, encourage cooperation between groups and individuals as needed to ensure staff members work effectively to achieve program objectives.

Must have the ability to communicate orally to groups of people such as the public citizens, law enforcement, medical, emergency medical services, schools, committees, and government officials as needed to create an awareness of their role in utility safety environment.

Works with the Director of Human Resources on all personnel-related actions

IV. COMMUNICATIONS:

ORAL: Must possess excellent communicative and organizational skills to effectively express one self to all levels of employees. Knows and uses correct verbal communication skills to articulate procedures, conduct group meetings or one on one meetings.

WRITTEN: Ability to effectively develop and write correspondence, reports, policies, procedures and provide written input for internal - external budgets, requests for proposals etc.

V. SCHEDULING AND PLANNING:

Must be able to schedule and organize time efficiently to complete tasks required. Ability to coordinate and plan monthly and annual tasks safely and efficiently. Must

possess the ability to plan, schedule and coordinate meetings with other departments.
Must be flexible and change jobs on short notice.

VI. BASIC JOB REQUIREMENTS MINIMUM:

EDUCATION: College Associate Degree or 4 years Equivalent Experience.
NRECA Certified Safety Loss Control Professional (within 2 years)

EXPERIENCE: Has minimum of four years of electric utility trade, safety work
experience.

OTHER SKILLS: Able to lift 40 lbs and work outdoors.

VII. EQUIPMENT OPERATED:

Computer – Microsoft Office programs and other Cooperative Programs, Power Operated
Lift Truck, Hand Tools, and Pickup Truck

VIII. WORKING ENVIRONMENT:

Office, field, warehouse, construction sites as required.

IX. ADDITIONAL INFORMATION:

Is knowledgeable in OSHA, NESC, RUS, EPA, State and Federal rules and regulations.
Maintains OSHA first responder and 30 hour certificates.

APPROVAL:

Supervisor

General Manager

SEPARATION AGREEMENT AND RELEASE

The parties to this Separation Agreement and Release (this "Agreement") are Suzette Bollinger, her heirs and assignees (collectively referred to as "Employee"), and Fall River Rural Electric Cooperative, Inc., and its affiliates, employees, officers, directors, members, insurers, and agents (collectively referred to as "Fall River").

RECITALS

1. Employee is currently employed by Fall River.
2. Fall River and Employee enter into this Agreement to specify the terms and conditions of Employee's separation from Fall River.

NOW, THEREFORE, based upon the foregoing recitals and the mutual covenants hereinafter set forth, Employee and Fall River agree as follows:

3. **Date of Separation.** July 28, 2009 shall be the date upon which Employee was (terminated/separated) from the employment at Fall River.
4. **Final Pay.** Employee acknowledges that he has received his final pay check from Fall River, including all earned salary through "Separation Date" totaling \$646.60, less regular withholdings.
5. **Separation Pay and Benefits.**

- i. **Accrued Sick Leave Cash-Out.** Employee shall receive a payment equal to 100% of sick leave accrued, calculated as of the Separation Date. ("Sick Leave Payment").
- ii. **Accrued Vacation Cash-Out.** Employee shall receive a payment equal to 100% of accrued vacation leave, calculated as of the Separation Date. ("Vacation Leave Payment").
- iii. **Four Months Base Wages.** Employee shall receive a payment equal to four months of base wages, calculated as of the Separation Date. ("Base Wage Payment").
- iv. **Four Months of Health Care Premiums.** Employee shall receive a payment for the monetary value of said medical care premiums paid by Fall River on behalf of the employee and their dependents, if dependent coverage is a benefit received, as of the Separation Date. ("Health Care Premium Payment").
- v. **Longevity Consideration.** Employee shall receive a payment equal to 2 days base wages for every 12 months of employment at Fall River calculated as of the Separation Date.
- vi. **Benefits.** Employee shall also be entitled to elect continuation, at his own expense, of group health coverage administered through COBRA effective on Separation Date.

See attachment for specific dollar amount detail on the above items.

6. **Disclosure of Confidential Information.** Employee acknowledges that, during the term of Employee's employment with Fall River, Employee has obtained and had access to confidential and proprietary information of Fall River, its members, clients, customers, suppliers and others. Employee agrees that he will not disclose, without prior specific authorization of an officer of Fall River, any confidential or proprietary information of Fall River, its members, clients, customers, suppliers, or others, obtained during Employee's employment with Fall River.

7. **Future Cooperation.** Employee agrees he will cooperate with Fall River and provide information to Fall River as to matters in which Employee was involved prior to Employee's date of separation, in connection with any claim or litigation, by or against Fall River, and will testify as a witness in connection with such matters if requested by Fall River to do so. Reasonable and necessary expenses incurred by Employee in connection with such cooperation will be reimbursed by Fall River to the extent agreed upon in advance.

8. **Release of All Claims.** Employee hereby releases, acquits, and forever discharges Fall River of and from any and all liabilities, rights, claims, demands, damages, actions or causes of action, suits or causes of suit, direct or indirect, to date which have been or could have been asserted, arising out of Employee's employment by Fall River and his separation from employment, under any statutory, contract (other than for breach of this Agreement), or

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common law theories, or under any applicable federal, state or local authority, including, but not limited to, any claim for reinstatement, re-employment, or for additional compensation in any form, and any claim arising under the Idaho, Montana and Wyoming statutes dealing with discrimination in employment, Title VII of the Civil Rights Act of 1964, the Post Civil War Civil Rights Act (42 U.S.C. §§ 1981-88), the Age Discrimination in Employment Act, the Rehabilitation Act of 1973, the Equal Pay Act of 1963, Executive Order 11246, the Federal Fair Labor standards Act, the Employee Retirement Income Security Act of 1974, the Americans with Disabilities Act of 1990, Idaho, Montana and Wyoming statutes dealing with hours and wages, all as amended, and any regulations under such authorities.

Fall River hereby releases, acquits, and forever discharges Employee from any and all known claims, liabilities, demands, obligations and causes of action, of every nature, character and description, arising out of, or relating in any way to, Employee's employment by Fall River.

9. **Right to Consult With Attorney.** Employee represents that Employee has had an opportunity to consult with an attorney regarding this Agreement. Employee acknowledges that Employee is responsible for the payment of Employee's own attorneys' fees with respect to the review and execution of this Agreement.

10. **Confidentiality of this Agreement.** Employee agrees to keep the existence, nature, terms and conditions of this Agreement strictly confidential, and will release such information only pursuant to subpoena or court order, or as necessary to his accountants and lawyers, and that he shall advise any such individual listed above who received such information of the confidentiality of this information. Employee may also inform his immediate family provided that such individuals are advised that the information is confidential and that they pledge to maintain such confidentiality.

11. **Voluntary Agreement.** By signing this Agreement, Employee acknowledges that Employee is signing voluntarily, without any coercion, after Employee has read all the contents of this Agreement. Employee further acknowledges that Employee understands the terms and conditions of this Agreement. Employee further represents that he has had the option of 45 days to consider this Agreement and that he has voluntarily chosen to sign the Agreement prior to the conclusion of the 45-day period. Further, Employee understands he may rescind this Agreement within 7 days of executing this Agreement.

12. **Complete Agreement.** The parties acknowledge that all agreements and understandings between them are embodied in and expressed in this Agreement. The parties acknowledge that no representations have been made concerning the subject matter of this Agreement other than those set forth in this Agreement. The terms of this Agreement are contractual and not merely recitals.

13. **Severability of Terms.** Except as provided in this paragraph, every provision contained in this Agreement is intended to be severable. In the event a court or agency of competent jurisdiction determines that any term or provision contained in this Agreement is illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect

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the other terms and provision of this Agreement, and the remainder of this Agreement shall continue in full force and effect.

14. **Controlling Law.** This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Idaho.

15. **Attorneys Fees.** In the event either party hereto shall be required to employ an attorney for the enforcement of this contract, with or without suit, the defaulting party agrees to pay the prevailing party's reasonable attorneys' fees.

16. **Miscellaneous Employee Representations.**

(a) *Employee understands and agrees that he is not suffering from any work related injuries or illness at the time of execution of the Separation Agreement from Fall River.*

17. **Counterparts.** This Agreement may be executed in counterparts or multiples, any one of which shall have the force of an original.

I have carefully read the above and I execute it voluntarily, fully understanding and accepting the provisions of this Separation Agreement in its entirety and without reservation after having had sufficient time and opportunity to consult with my legal advisors prior to executing this Agreement. I have been advised to consult with an attorney prior to executing this Agreement. In agreeing to sign this Agreement I have not relied on any statements or explanation made by the Fall River. I have had at least forty five (45) days to consider this Agreement. I understand that if I do not return this Agreement signed by me to Fall River within the forty five (45) day consideration period this offer will expire. I understand that I may revoke and cancel the Agreement within seven (7) days after signing it by serving written notice upon Fall River.

DATED this _____,

EMPLOYEE:

Suzette Bollinger

Fall River Rural Electric Cooperative, Inc.

By: _____
Bryan L. Case

Its: _____
General Manager

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Case Affidavit
EXHIBIT 6 Pg. 4 of 5

FALL RIVER 00752

Attachment:

Suzette Bollinger	Current Wage	Health Care	Years of Service
	\$22,501.68	\$4,797.80	\$10,862.88
Total \$38,162.36			
	Vacation	Sick	(as of 08/10/2009)
	393.74 hours	103.90 hours	
Total \$16,088.70	\$12,729.61	\$3,359.09	

Current Wage Hourly \$ 32.33
 Daily @ 8 hr day \$ 258.64
 Annual hourly x 2088 \$67,505.04
 Monthly annual / 12 \$ 5,625.42 X 4 mo = \$22,501.68

Health Care Dental \$ 123.03
 Monthly premium Vision 24.58
 Plus spouse Medical 884.34
 Prescription 165.50
 Total \$1,199.45 X 4 mo = \$4,797.80

Years of Service Date of Hire 10/20/1988 has completed 20years, will be 21 in Oct.
 20 years times 2 days (42 X 258.64) = \$10,862.88

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing AFFIDAVIT OF JAMES M. BARRETT IN SUPPORT OF DEFENDANT'S RULE 56(b) MOTION FOR SUMMARY JUDGMENT on the following:

John M. Ohman
cobjmo@ida.net
Cox, Ohman & Brandstetter, Chartered
510 "D" Street
Idaho Falls, ID 83405-1600

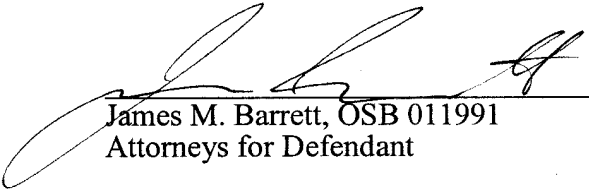
Attorney for Plaintiff

by electronic transmission and U.S. First-Class Mail a true and correct copy thereof to said parties on the date stated below.

In addition, a courtesy copy of this document was sent by U.S. First-Class Mail to the following on the date stated below:

The Honorable Darren B. Simpson
District Judge
501 North Maple, #205
Blackfoot, ID 83221

DATED this 19th day of April, 2010.


James M. Barrett, OSB 011991
Attorneys for Defendant

CERTIFICATE OF SERVICE

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

934452/1/JMB/103889-0003

FILED IN CHAMBERS AT BLACKFOOT,
BINGHAM COUNTY, IDAHO _____

May 5, 2010
AT 10:50am.

Darren B. Simpson
DARREN B. SIMPSON
DISTRICT JUDGE

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER)

Plaintiffs,)

-vs-)

FALL RIVER RURAL ELECTRIC)
COOPERATIVE, INC.; BRYAN CASE;)
and LARRY HAMILTON)
Defendants)

Case No. CV-2010-36

NOTICE VACATING
AND RESCHEDULING HEARING

NOTICE IS HEREBY GIVEN that Defendants' Rule 56(b) Motion for Summary Judgment, previously scheduled for May 25, 2010, at 2:00p.m., in Fremont County is hereby *vacated* and rescheduled to take place Thursday, May 27, 2010 at 1:00p.m., at the Fremont County Courthouse, located in St. Anthony, Idaho.

Dated this 5TH day of May 2010.

Darren B. Simpson
Darren B. Simpson
District Judge



CERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 5th day May 2010, a true and correct copy of the **NOTICE VACATING AND RESCHEDULING HEARING** was served on the attorney and/or person listed below as follows:

JOHN OHMAN ESQ
COX OHMAN & BRANDSTETTER
PO BOX 51600
IDAHO FALLS IDAHO 83405-1600

U.S. Mail Courthouse Box Facsimile

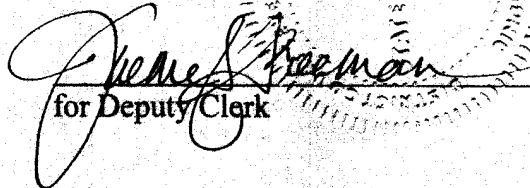
JERRY RIGBY ESQ
RIGBY ANDRUS & RIGBY
25 NORTH SECOND EAST
REXBURG IDAHO 83440

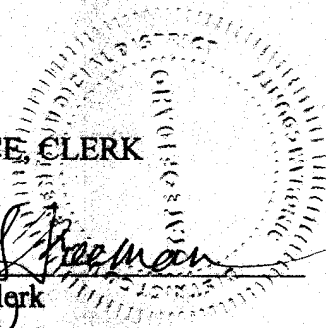
U.S. Mail Courthouse Box Facsimile

JAMES M. BARRETT
ATER WYNNE, LLP
1331 NW LOVEJOY ST., SUITE 900
PORTLAND, OR 97209

U.S. Mail Courthouse Box Facsimile

ABBIE MACE, CLERK


for Deputy Clerk



DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed: _____
 MAY 14 2010
 ABIE MACE, CLERK
 By: RTM Deputy Clerk

JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Idaho State Bar #1501

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
 COOPERATIVE, INC., an Idaho
 Corporation,

Defendant.

Case No. CV-10-36

**AFFIDAVIT OF SUZETTE BOLLINGER
 IN OPPOSITION TO DEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT**

STATE OF IDAHO)
 :ss.
 County of Bonneville)

Plaintiff Suzette Bollinger affirms as follows:

1. Affiant is of the age of majority, is fully informed of the facts herein, and is well able and competent to testify to the facts herein stated.

**AFFIDAVIT OF SUZETTE BOLLINGER IN OPPOSITION TO DEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT - 1**

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ORIGINAL

2. I have reviewed all of the documents provided to me by Defendant Fall River Rural Electric Cooperative, Inc. ["FRREC"], through the discovery process – and am fully familiar therewith.
3. Also, I have reviewed all the pleadings filed herein, particularly those in support of Defendant FRREC's pending Motion for Summary Judgment.
4. FRREC provides service to cooperative members in Idaho, Montana, and Wyoming.
5. In 1988, I became employed by FRREC as a cashier/receptionist.
6. In 1993, I was promoted to the position of Energy Auditor, and in 2004, I also was assigned as the Member Services Representative.
7. In 2007, the National Rural Electric Cooperative Association ["NRECA"] performed a survey, and directed that the responsibilities regarding safety should be separate from operations at FRREC. Its audit stated that the Operations Manager heads the department, and required that a separate position be set up for "safety duties."
8. In February 2008, I applied for, and was hired for the position of Safety & Loss/Facility Director.
9. In 2008, I had 20 years of work experience at FRREC.
10. I put my knowledge and experience to use in the execution of my duties as Safety & Loss/Facility Director.
11. In 2008, my immediate supervisor was Larry Hamilton, the Operations Manager,

**AFFIDAVIT OF SUZETTE BOLLINGER IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT - 2**

S:\MICK\Clients\Bollinger.Suzette\Affidavit of Suzette Bollinger re MSJ.wpd

but I also interacted with Dee Reynolds, the General Manager.

12. My promotion to Safety & Loss/Facility Director, necessitated that I become familiar with safety regulations regarding the operation of FRREC.
13. My duties and responsibilities as Safety & Loss/Facility Director for FRREC, were to notify FRREC's management of any failure by the Cooperative to comply with applicable State [Idaho and Montana] and Federal safety laws, rules, and regulations.
14. I read all material available at FRREC, or researched information on the internet, regarding Safety Regulation, as set forth in the following:
 - a. FRREC's procedures and policies;
 - b. NESC Code [National Electrical Safety Code];
 - b. OSHA [Occupational Safety and Health Administration]; and
 - c. Idaho Department of Environmental Quality.
15. I attended local and regional seminars and received training from the following:
 - a. Montana Department of Transportation;
 - b. NESC course in Arc Flash;
 - c. NRECA: Certified Loss Control Professional ["CLCP"];
 - d. OSHA training: certified in General Industry [Certification #700494296] and Construction Safety & Health [Certification #001289759];
 - e. Polychlorinated biphenyls ["PCB"] Regulatory Compliance Services training;

**AFFIDAVIT OF SUZETTE BOLLINGER IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT - 3**

S:\MICK\Clients\Bollinger.Suzette\Affidavit of Suzette Bollinger re MSJ.wpd

- f. MECA [“Montana Electric Cooperative Association”] training; and
 - g. In June, 2010, I was signed up for the Northwest Lineman College Lineworker Certification Program, a correspondence course, but was unable to begin, as I was terminated.
16. I interacted with Federated Insurance and was informed of several violations which required correction by FRREC. [e.g. diesel tank located on the dock in Driggs; improper stairs at the Buffalo Hydro; lack of eye wash stations at the Island Park Hydro; improper railing at Ashton Office, and failure to regularly inspect fire extinguishers in FRREC buildings and vehicles.]
 17. I have personal knowledge that funding for my training was provided in FRREC’s 2008 budget.
 18. I have personal knowledge that there was funding in the 2008 FRREC budget for purchase of safety equipment.
 19. I have personal knowledge that funding for my training was provided in FRREC’s 2009 budget.
 20. I have personal knowledge that there was funding in the 2009 FRREC budget for purchase of safety equipment.
 21. On or about January 20, 2009, Dee Reynolds retired and Bryan Case became the General Manager of FRREC.
 22. In January 2009, I was number 19 out of over 50 employees on FRREC’s seniority roster.

**AFFIDAVIT OF SUZETTE BOLLINGER IN OPPOSITION TO DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT - 4**

S:\MICK\Clients\Bollinger.Suzette\Affidavit of Suzette Bollinger re MSJ.wpd

23. Shortly after Bryan Case became General Manager, he began to question me about FRREC's then existing safety programs and policies, and Federal and State safety regulations.
24. Mr. Case refused to implement or to follow safety rules and regulations of which I made him aware, and would instead veto, shame or ridicule me; he became hostile toward me and ignored requirements for equipment; procedures; and regulations.
25. Mr. Case was not concerned for the safety of FRREC's employee, especially those employees and others that worked with and on well and heating systems.
26. On July 28, 2009, I was called into a meeting with Bryan Case, Mickie Funke, and Larry Hamilton and was informed that my position as Safety & Loss/Facility Director had been eliminated (even though such was required by NRECA), and that I was no longer employed by FRREC.
27. After this meeting, I was escorted to my office by Larry Hamilton and Mickie Funke to gather my personal belongs.
28. Once in my office, Larry and Mickie told me to hurry because they had a meeting to go to and that I needed to get this done.
29. Mickie and Larry began taking things off of my counter and walls and placing those items into boxes.
30. Mickie and Larry gave me 30 minutes to clean out 21 years of personal items that I had at FRREC.
31. During my 21 years of employment, I was aware of FRREC's personnel policies

**AFFIDAVIT OF SUZETTE BOLLINGER IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT - 5**

S:\MICK\clients\Bollinger.Suzette\Affidavit of Suzette Bollinger re MSJ.wpd

protecting employees with seniority status, and terminating employees only for cause.

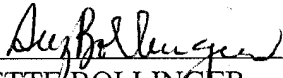
32. On July 28, 2009, FRREC and Bryan Case disregarded those personnel policies by ignoring my seniority status and terminating without cause.
33. During my entire 21 years of employment at FRREC (and as acknowledged by Bryan Case in his Affidavit), I always performed my “duties in a satisfactory manner.”
34. I always adhered to the standards required by FRREC of its employees. I was never accused of misconduct, admonished, chastised, , given a warning, written up, or disciplined in any way by any of my supervisors at FRREC.
35. As an employee of FRREC, I followed all federal and state laws and regulations in the performance of my duties. I performed my duties with honesty, integrity, and mutual respect for fellow employees, supervisors, managers and our customers.
36. I was a loyal and dedicated FRREC employee for 21 years. I was treated unfairly and humiliated by the actions of FRREC.
37. Prior to July 2009, I had never experienced emotional or mental problems; but after my termination, I became depressed, anxious, experienced insomnia and irritability, as a result of which I have required professional care.
38. My health care provider has diagnosed “post-traumatic stress disorder”, resulting from FRREC actions in terminating my employment.

**AFFIDAVIT OF SUZETTE BOLLINGER IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT - 6**

S:\MICK\Clients\Bollinger.Suzette\Affidavit of Suzette Bollinger re MSJ.wpd

39. I am now required to take medication for the depression, and rely upon sleeping pills for my emotional stress, caused by FRREC's disregard of my 21 years of loyalty and dedication to it and its cooperative members.
40. My relationships with family members, involved with FRREC, and my friends and fellow employees have been affected by FRREC's actions.
41. I was a FRREC employee for nearly half of my life, and FRREC's actions have affected my self-confidence, self-esteem, and identity.
42. FRREC disregarded my employee rights, and caused my loss of dignity when it forced me out of my FRREC office on July 28, 2009. These actions were observed by my co-workers, which caused me undue stress and humiliation.
43. FRREC terminating me while knowing I was schedule to leave for vacation on July 29, 2009, precluded my timely filing for unemployment benefits.
44. FRREC also terminated my health insurance as of July 29, 2009, without informing me it had done so.
45. Notwithstanding my extensive experience with FRREC and the training that I have received, living in Ashton, Idaho, limits my opportunities of employment.

DATED This 12 day of May, 2010.

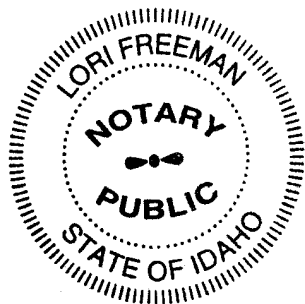



SUZETTE BOLLINGER

SUBSCRIBED AND SWORN to before me this 12 day of May, 2010.

**AFFIDAVIT OF SUZETTE BOLLINGER IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT - 7**

S:\MICK\Clients\Bollinger,Suzette\Affidavit of Suzette Bollinger re MSJ.wpd




NOTARY PUBLIC FOR IDAHO
Residing at: Barrett, ID
My commission expires: 02-18-2016

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 12 day of May, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

Fremont County
Court Clerk
151 W. 1st N, Rm 15
St. Anthony, ID 83445

By pre-paid post
 By hand delivery
 By facsimile transmission
624-4607

Honorable Gregory W. Moeller
Madison County
Court Clerk
P. O. Box 389
Rexburg, ID 83440

By pre-paid post
 By hand delivery
 By facsimile transmission
356-5425

James M. Barrett, Esq.
Jathan Janove, Esq.
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-2785
Fax: (503) 226-0079

By pre-paid post
 By hand delivery
 By facsimile transmission
 By courthouse box
 By electronic transmission
jmb@aterwynne.com



JOHN M. OHMAN, ESQ.

**AFFIDAVIT OF SUZETTE BOLLINGER IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT - 8**

S:\MICK\Clients\Bollinger.Suzette\Affidavit of Suzette Bollinger re MSJ.wpd

DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed: MAY 14 2010
 By: Abbie Mace CLERK
 Deputy Clerk

JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Idaho State Bar #1501

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,
 Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
 COOPERATIVE, INC., an Idaho
 Corporation,
 Defendant.

Case No. CV-10-36

**AFFIDAVIT OF AUTHENTICITY IN
 SUPPORT OF PLAINTIFF'S
 OPPOSITION TO DEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT**

STATE OF IDAHO)
)
 County of Bonneville)

John M. Ohman, Esq., attorney for Plaintiff, affirms as follows:

1. Affiant is legal counsel to Plaintiff and is well able and competent to testify to the facts stated herein.

**AFFIDAVIT OF AUTHENTICITY IN SUPPORT OF PLAINTIFF'S OPPOSITION TO
 DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1**

S:\MICK\Clients\Bollinger,Suzette\Affidaivt of Authenticity in Opposition to MSJ.wpd

ORIGINAL

2. The following documents are provided in support of the within **PLAINTIFF'S
REPLY MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT:**

EXHIBITS	DOCUMENT
1	FALL RIVER ELECTRIC COOPERATIVE INC. GENERAL POLICIES <u>600.00 PERSONNEL POLICIES</u> index
2A	601.0 PERSONNEL POLICIES [adopted March 14, 1997]
2B	601.0 PERSONNEL POLICIES [revised October 27, 2004]
2C	601.0 EMPLOYMENT-AT-WILL [revised March 20, 2009]
3	602.0 MANAGEMENT-EMPLOYEE RELATIONS [adopted March 1977, revised September 15, 2003]
4	604.0 SELECTION OR PROMOTION OF PERSONNEL [adopted March 1977, revised May 1989]
5	614.1 WORK STANDARDS AND PERSONAL CONDUCT [adopted March 1983, revised October 14, 2004]
6	615.0 TERMINATION OF EMPLOYMENT [adopted March 1977]
7	616.0 EMPLOYEE SENIORITY [adopted June 1983, revised April 26, 2006]
8	625.0 ANTI-HARASSMENT [adopted May 30, 2009]
9	Suzette's March 4, 2010, deposition pages: 7, 8, 10, 11, 14, 15, 17, 162, 163, 164, 186, 188, 190, 209, 210, and 211

3. Each of said exhibits is a true and correct copy of documents received from defendant, obtained from plaintiff's file, and from plaintiff's deposition.

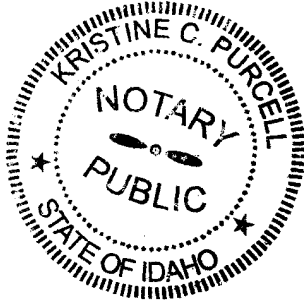
DATED this 12 day of May, 2010.

**AFFIDAVIT OF AUTHENTICITY IN SUPPORT OF PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 2**

S:\MICK\Clients\Bollinger.Suzette\Affidavit of Authenticity in Opposition to MSJ.wpd


JOHN M. OHMAN, ESQ.

SUBSCRIBED AND SWORN to before me this 12 day of May, 2003.




NOTARY PUBLIC FOR IDAHO

Residing at: Idaho Falls, ID

My commission expires: 7-7-15

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 12 day of May, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

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JOHN M. OHMAN, ESQ.

AFFIDAVIT OF AUTHENTICITY IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 3

S:\MICK\Clients\Bollinger.Suzette\Affidavit of Authenticity in Opposition to MSJ.wpd

FALL RIVER ELECTRIC COOPERATIVE INC.

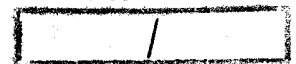
GENERAL POLICIES

INDEX

600.0 PERSONNEL POLICIES

<u>POLICY #</u>	<u>SUBJECT</u>	<u>DATE</u> <u>ADOPTED-REVISED</u>	<u>DATE</u> <u>ADOPTED-REVISED</u>
600.0	Purposes, Development, And Revision Of Personnel Policies	Mar/30/2009	
601.0	Employment At Will	Mar/77	Mar/30/2009
602.0	Management-Employee Relations	Mar/77	Sep/15/2003
603.0	Equal Employment Opportunities	Mar/77	Aug/25/2003
603.1	Equal Employment Opportunities & Affirmative Action Plan for Handicapped Individuals, Disabled Veterans, & Veterans Of The Vietnam Era	Dec/79	
604.0	Selection or Promotion of Personnel	Jan/77	Mar/89
605.0			
606.0	Physical Examinations	Oct/79	
607.0	Work Rules	Sep/84	
608.1	Salary & Wage Administration	Dec/79	May/96
609.0	Performance: Delete- Combined with 608.1	Sep/85	May/96
610.0	Employee and Director Purchasing	Oct/86	Oct/18/2004
610.3	Reimbursement of Business Expense	Dec/79	Aug/28/2006
611.0	Employee Training & Development	Jul/87	
612.0	Employee Housing Incentive Pay	Jan/24/2007	
613.0	Guidelines For Use Of Cellular Telephones And Other Electronic Equipment	Dec/28/2009	
614.0	Grievance Procedure - combined into 614.1	Sep/85	
614.1	Work Standards And Personal Conduct	Mar/83	Oct/18/2004
615.0	Termination of Employment	Mar/77	
616.0	Employee Seniority	Jun/83	April/26/2004
617.0	On-the-Job Accidents	Mar/77	
618.1	Drug Free Worksite & Alcohol Abuse	Feb/92	Aug/13/1992
619.0	Holidays	May/83	Jan/22/2009
620.1	Vacation Leave	Mar/77 Dec/89,	June/22/2009
621.2	Sick Leave	Feb/87 Feb/96	Sep/26/05
622.0	Use of Cooperative Vehicles	Apr/86	

EXHIBIT



623.0	Sexual Harassment	May/88	Mar/30/2009
624.0	Benefit Procedures for Disabled or Terminating Employees	May/26/2009	
625.0	Anti-Harassment	Mar/30/2009	

(Update Index Jan 2003)

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

GENERAL POLICY NO. 601.0

SUBJECT: PERSONNEL POLICIES

I. PURPOSE:

The Cooperative recognizes the need for a staff of efficient, loyal, and well-trained employees who are vitally interested in the operation of the Cooperative. The employees need to know that loyalty, cooperation, and growth in skills and effectiveness on the job will be recognized and rewarded. Therefore, it is advisable to define the employer-employee relationships through a series of personnel policies so that there may be mutual understanding of the special employment conditions under which the Cooperative employees function in their jobs.

II. POLICY:

It shall be the policy of the Board of Directors of Fall River Rural Electric Cooperative, Inc., to adopt such policies as will assure the Cooperative personnel that loyalty, cooperation, and growth in skills and effectiveness on the job are of mutual benefit to the Cooperative and the employees. Such personnel policies will be adopted to establish and define clearly in written form the special conditions relating to employment which will assure a spirit of confidence, cooperation, understanding, and loyalty so necessary in a successful enterprise.

III. RESPONSIBILITY:

The Board of Directors and the General Manager

IV. PROVISIONS:

The Board of Directors shall consider the personnel policies recommended by the General Manager and adopt those policies which are consistent

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2A

GP 601.0 - 2

with sound personnel practices and with other policies and programs of the Cooperative.

This policy supersedes any existing policy which may be in conflict with the provisions of this policy.

APPROVED BY THE BOARD OF DIRECTORS

Vernon Christoffersen
Vernon Christoffersen, President

DATE ADOPTED: March 14, 1977

DATE EFFECTIVE: March 14, 1977

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

GENERAL POLICY NO. 601.0

SUBJECT: PERSONNEL POLICIES

I. PURPOSE:

Personnel policies are intended to provide a framework to guide the management of the Cooperative and to inform employees generally of their responsibilities and what to expect from employment with the Cooperative.

The Cooperative recognizes that motivated, efficient, well-trained, and dedicated employees are essential to the effective operation of the enterprise. Further, Cooperative employees need to understand that their willingness and ability to contribute to the effectiveness of the operation is essential to their individual progress and success in the organization.

It is important, therefore, that the Cooperative establish personnel policies to assure mutual understanding by managers and employees regarding the principle aspects employment with the Cooperative -- focusing on what the Cooperative expects from its employees and what employees may expect from the Cooperative.

II. POLICY:

It shall be the policy of the Board of Directors of Fall River Rural Electric Cooperative, Inc., to adopt such personnel policies as will assure the Cooperative's ability to attract and retain a quality workforce of skilled and motivated employees who are committed to the ongoing success and vitality of the Cooperative.

More specifically, policies will be adopted with the intent to encourage dedicated and loyal service to the Cooperative and its customers and to reward employees fairly and consistently according to generally accepted job-related standards. Factors that are important to the effective operation of the Cooperative include: dedicated and loyal service, job knowledge

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and skills, job effectiveness, continual learning and improvement, and teamwork on the part of all employees.

Further, under these policies, it is essential that all relationships and actions within the Cooperative be guided by principles of honesty, integrity, legal compliance, and mutual respect among all employees and managers.

In today's work environment, business conditions of the Cooperative can change, sometimes quite rapidly. It must be understood that all personnel policies are subject to change at the discretion of the Cooperative as conditions warrant. Cooperative management will endeavor to inform employees of any changes in policy as soon as practicable. However, circumstances may require some policy changes without prior notice.

It is also important for all managers and employees to understand that employment with the Cooperative is entirely voluntary. The Cooperative's personnel policies are not intended and cannot be implied to create an employment contract or to guarantee permanent employment or employment for any fixed or set time period.

The employee or the Cooperative may terminate the employment relationship at any time for any lawful reason. No manager has any authority to make any other agreement to the contrary unless such agreement is specified in writing and approved by the Board of Directors.

III. RESPONSIBILITY:

The Board of Directors and the General Manager

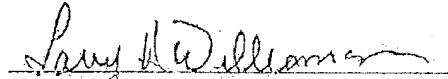
IV. PROVISIONS:

The Board of Directors shall consider the personnel policies recommended by the General Manager and adopt those policies that are consistent with sound personnel practices and with other policies and programs of the Cooperative.

V. **PRIMACY OF POLICY:**

This policy supersedes any existing policy that may be in conflict with the provisions of this policy.

APPROVED BY THE BOARD OF DIRECTORS



Larry H. Williamson, President

DATE EFFECTIVE: October 27, 2003

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

GENERAL POLICY NO. 601.0

SUBJECT: EMPLOYMENT-AT-WILL

I. POLICY:

It shall be the policy of the Board of Directors of Fall River Rural Electric Cooperative, Inc., to adopt such personnel policies as will assure the Cooperative's ability to attract and retain a quality workforce of skilled and motivated employees who are committed to the ongoing success and vitality of the Cooperative.

More specifically, policies will be adopted with the intent to encourage dedicated and loyal service to the Cooperative and its customers and to reward employees fairly and consistently according to generally accepted job-related standards. Factors that are important to the effective operation of the Cooperative include: dedicated and loyal service, job knowledge and skills, job effectiveness, continual learning and improvement, and teamwork on the part of all employees.

Further, under these policies, it is essential that all relationships and actions within the Cooperative be guided by principles of honesty, integrity, legal compliance, and mutual respect among all employees and managers.

II. PURPOSE:

All employees who do not have a separate, individual written employment contract for a specific fixed term of employment are employed at the will of the company and may be terminated by the company at any time, for any reason, with or without notice, except as prohibited by law or the express provisions of any applicable labor agreement. Any contract or agreement that specifies a fixed term of employment must be approved by the board of directors, and signed by the president or general manager of the company.

III. PROVISIONS:

A. Employees who do not have a separate, individual written employment contract signed by the President or General Manager of the Cooperative are employed at the will of the Cooperative and are subject to termination at any time, for any reason, with or without cause or notice, except as prohibited by law or by the express provisions of any applicable labor agreement. Similarly, employees may terminate their employment at any time and for any reason.

B. The Cooperative's Board of Directors is the only body authorized to override the Employment-at-Will provision. No Cooperative representative is authorized to modify the policy for any employee or applicant for employment or to enter into any agreement, oral or written, contrary to this policy. Supervisory and management personnel should not make any representation to employees or applicants concerning the terms or conditions of

2 C

conditions of employment with the Cooperative that are inconsistent with this policy.

- C. This policy will not be modified by any statements contained in this or any other employee handbooks, employment applications, recruiting materials, memoranda, or any other materials provided to employees in connection with their employment. None of these documents, whether singly or combined, will create an express or implied contract concerning any terms or conditions of employment.
- D. Nothing contained in this manual, employee handbooks, employment applications, Cooperative memoranda, or other materials provided to employees in connection with their employment require the Cooperative to have just cause in order to terminate an employee or otherwise restrict the Cooperative's right to terminate any employee at any time or for any reason. Provided, however, that the Cooperative will not terminate any employee for reasons that violate state or federal law, or the express provisions of any applicable labor agreement.
- E. Statements of specific grounds for termination set forth elsewhere in this manual are not all-inclusive and are not intended to restrict the Cooperative's right to terminate at will.

IV. RESPONSIBILITY:

The General Manager is responsible for the administration of this policy. Fall River Electric Rural Electric Cooperative, Inc.'s Board of Directors is the only body authorized to override the Employment-at-Will provision. No company representative is authorized to modify this policy for any employee or applicant for employment or to enter into any agreement, oral or written contrary to this policy. Supervisory and management personnel should not make any representation to employees or applicants concerning the terms or conditions of employment with Fall River Electric that are inconsistent with this policy.

V. PRIMACY OF POLICY:

This policy supersedes any existing policy that may be in conflict with the provisions of this policy. This policy does not represent a contract between the employer and employee, and the employer herein may change the policies alone and without notice.

APPROVED BY THE BOARD OF DIRECTORS


Boyd Bowles, Board President

DATE EFFECTIVE: March 30, 2009

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

GENERAL POLICY NO. 602.0

SUBJECT: MANAGEMENT-EMPLOYEE RELATIONS

I. PURPOSE:

Recognizing the importance of sound operational management of the Cooperative to achieve the purpose for which it was organized, the Board of Directors has delegated the responsibility of management to the General Manager (General Policy No. 204). In addition, the Board has given the General Manager full authority to operate the Cooperative within established policies and procedures as he interprets them.

The General Manager pledges to operate the Cooperative in a fair manner, which will respect the rights of all employees and serve the best interests of the Cooperative. To fulfill this pledge, he will recommend personnel policies, as they are necessary for the consideration of the Board of Directors.

II. POLICY:

It shall be the policy of the Board of Directors of Fall River Rural Electric Cooperative, Inc. to expect that management-employee relations shall be maintained in conformity with the provisions established in this policy and applicable laws and regulations.

III. RESPONSIBILITY:

The General Manager and All Employees

IV. PROVISIONS:

To create a basis for the daily operation of the Cooperative, the General Manager and all employees shall be guided by the following principles:

- A. Management reserves the right to:
 - 1. Control and supervise the operation of the Cooperative.

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2. Determine job requirements and personnel needed.
3. Direct the working force.
4. Employ, discharge, transfer, promote, demote, and discipline employees as necessary to protect the best interests of the Cooperative.
5. Make final determination of all problems related to the daily operation of the Cooperative, including the interpretation of the General Policies.

B. Management pledges to:

1. Respect the rights and dignity of all employees.
2. Maintain a work environment that fosters teamwork and mutual respect.
3. Operate the Cooperative in a manner that is fair to each employee and consistent with the business needs of the Cooperative.
4. Provide competitive wages and benefits which are in line with comparable market rates and consistent with the financial condition of the Cooperative.
5. Make the Cooperative a safe place to work.
6. Give full consideration to all corrective suggestions that might increase the efficiency of operations and improve working conditions.
7. Listen and be responsive to employee problems and concerns.

C. Management expects each Cooperative employee to:

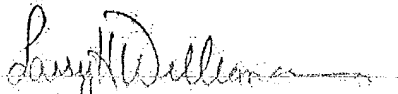
1. Respect the position, dignity, and rights of all other employees.
2. Perform his (her) work in an efficient manner and in the best interest of the Cooperative.
3. Continue learning and improving job skills.
4. Protect and preserve the property of the Cooperative to the best of his (her) ability.
5. Hold inviolate confidential information about the Cooperative and its employees.
6. Conduct himself (herself) in relations with members and the general public in such a way as to reflect favorably upon the Cooperative.

7. Refrain from engaging in such off-the-job activities as will impair his (her) effectiveness as an employee of the Cooperative.

V. **PRIMACY OF POLICY:**

This policy supersedes any existing policy that may be in conflict with the provisions of this policy.

APPROVED BY THE BOARD OF DIRECTORS


Larry H. Williamson, President

DATE APPROVED: September 15, 2003

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.
GENERAL POLICY NO. 604.0
SUBJECT: SELECTION OR PROMOTION OF PERSONNEL

I. PURPOSE:

In order to operate most efficiently, the Cooperative must employ the best qualified individuals available to fill vacant positions. The purpose of this policy is to assure applicants for positions that they will be treated fairly in accordance with accepted personnel practices and applicable state and federal laws.

II. POLICY:

It shall be the policy of Fall River Rural Electric Cooperative, Inc. to employ the best qualified individuals available for all vacancies in accordance with accepted personnel practices and applicable state and federal laws.

III. RESPONSIBILITY:

The General Manager and each Department Head and the Board of Directors.

IV. PROVISIONS:

The following procedures and conditions shall apply to the provisions of this policy:

- A. In filling vacancies all applicable federal and state legal restrictions will be observed. (See General Policy No. 603, Equal Employment Opportunities).
- B. All vacancies shall be filled by the best qualified applicant. Whenever there are employees within the Cooperative who are able to qualify, they will be given first consideration if all other qualifications are equal. Only if two or more employees have equal qualifications, will length of service be given consideration. Management reserves the right to make the final determination based on the needs of the Cooperative.
- C. Each applicant's experience, training, and references will be measured against the written job specifications or qualifications and the position description for the vacant position. Applicants may be asked to take appropriate tests, the results of which may be one factor to be considered in the determination of the applicant best qualified to fill the position.
- D. Graduation from high school or higher education or the

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passing of a general educational development examination will be required for most positions if the job qualifications are such as to require it, or if such educational proficiency can be used as a measure to determine the applicant's ability to engage in and complete projects and assignments which necessitate initiative, judgement, independence of action, and responsibility.

- E. Before a successful applicant can be assigned to full employment, he/she may be required to have a physical examination as specified by the Cooperative at the Cooperative's expense by a physician approved by the Cooperative. Employment may be contingent upon the results of this physical examination and depending upon the job duties being applied for. In the event that the required physical examination cannot be completed before the day the employee is to start work, he/she may begin work on a temporary basis, but cannot be paid until the examination has been completed.
- F. Job vacancies are filled on the basis of specific relevant criteria believed essential to the selection of the best qualified candidate. However, an otherwise qualified candidate is excluded from consideration for a vacancy if a potential conflict of interest involving a relative would be created. Further, the Cooperative remedies situations in which relationships between or among related employees create actual or potential conflicts of interests.

Relative for the purpose of this policy means:

Wife	Sister	Sister-in-law
Husband	Brother	Step Sister
Children	Grand Parent	Step Brother
Step Children	Grand Child	Aunt
Mother	Step Parent	Uncle
Father	First Cousin	Niece
Mother-in-law	Brother-in-law	Nephew
Father-in-law		

- G. Candidates are ineligible for employment, promotion or transfer to a job where an employee who is a relative would recommend or approve hiring, termination, performance appraisals, pay changes, disciplinary actions, promotions, etc., for the candidate.
- H. Restrictions regarding relatives are:
 - 1. They do not report to the same immediate supervisor. This includes work assignments in which employees are rotated.

2. They are not permanently assigned to work locations in which they are physically close to or in view of each other if such location does or is believed to create conflicts of interest.
 3. They are not permitted to work in sensitive jobs or critical assignments that are interrelated.
- I. Responsible supervision established safeguards to prevent situations in which an employee processes or has access to sensitive paperwork or other communications regarding a relative.
 - J. The provisions of this policy also apply when two employees marry. In cases where requirements of this policy are not met, the involved employees choose which one transfers or terminates. In cases where involved employees cannot reach a mutual agreement, the employee with less total service transfers or terminates within ninety (90) days from the date of marriage.
 - K. The provisions of sections G and H do not apply in cases that existed prior to the effective date of this policy, except the provisions of the bylaws on this matter shall still apply. However, corrective changes are made as appropriate vacancies occur and the requirements apply on future transfers and promotion actions involving these employees.
 - L. Potential conflicts of interest not specifically noted in this policy are corrected by management in the best interest of the Cooperative.

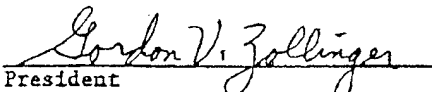
This policy supersedes any existing policy or policies which may be in conflict with the provisions of this policy and does not represent a contract between employee and employer, but only a guideline, and the policies herein may be changed by the employer alone and without notice.

APPROVED BY THE BOARD OF DIRECTORS

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC.

Effective Date: 1/10/77

Revised: 3/20/89


President

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

GENERAL POLICY NO. 614.1

SUBJECT: WORK STANDARDS AND PERSONAL CONDUCT

I. PURPOSE:

Standards of business and personal conduct are important to the success of the Cooperative and each employee. Enforcement of these standards will not only contribute to the continued economic viability of the Cooperative but also will help make the Cooperative a better and safer place to work.

II. POLICY:

A. All employees are expected to abide by applicable federal and state laws and regulations in the performance of their job duties, as well as other commonly accepted standards of business and personal conduct. These standards include honesty, integrity, and mutual respect for fellow employees, supervisors, managers, and customers. Employees are expected also to observe and comply with all policies and performance standards that may be established by the Cooperative.

B. Violation of these standards may result in discipline up to and including discharge, depending on the circumstances involved. It would be impractical and perhaps even impossible to list all possible instances of potential work-related misconduct or performance issues. However, listed below are several examples or benchmarks of the kinds of misconduct or performance problems that may result in discipline. These examples are intended as further guidance to managers, supervisors, and employees regarding the Cooperative's general standards and expectations described above.

1. Dishonesty in any form, including falsification of records or reports or providing misleading information.
2. Theft or unauthorized possession of property belonging to the Cooperative, other employees, or customers.

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3. Damage, loss, or destruction of Cooperative property or property belonging to customers or other employees due to willful, reckless, careless, or negligent acts.
4. Unauthorized use or misuse of Cooperative time, material, equipment, property, or confidential information.
5. Being under the influence of, possessing, or using alcohol or other intoxicants or illegal substances while on duty.
6. Insubordination, failure to perform assigned work, or neglect of duties.
7. Poor performance, failure to meet job requirements, inefficient or inadequate completion of assigned duties, sleeping or loafing on the job.
8. Failure to observe safety rules and regulations.
9. Unexcused or excessive absenteeism or tardiness.
10. Failure to work courteously and harmoniously with other employees, customers, and other persons doing business with the Cooperative.
11. Fighting, horseplay, or other disorderly conduct that may endanger the well being of other employees, customers, or the operation of the Cooperative.
12. Threatening, harassing, intimidating, or coercing others; using profane, obscene, or abusive language; or interfering with the duties or performance of others.
13. Other conduct that could adversely affect the job performance, effectiveness, or safety of the employee or others; or the Cooperative's effectiveness, interests, or regard in our industry or service area.

These examples are not all inclusive and do not reflect all possible circumstances that may result in discipline. Specific questions about the application of this policy to any particular situation should be direct to your manager.

C. Failure to observe Cooperative policies, rules, and standards, as described above, may result in disciplinary action including counseling, warnings, suspension, or discharge depending on the circumstances involved.

1. The Cooperative's discipline policy is not intended to be punitive, but to help employees identify and correct work-related problems and deficiencies. The

Cooperative normally will initially warn employees for *minor* infractions with limited risks of harm to personnel, property, or other interests of the Cooperative before to taking more severe disciplinary action.

Serious misconduct with actual or potential risk of *significant* damage or harm to employees, property, or other Cooperative interests may result in severe disciplinary action or discharge without prior warnings.

2. The Cooperative will endeavor to fairly and objectively evaluate the relevant facts and evidence prior to assessing disciplinary action. Where appropriate, the Cooperative will conduct a formal investigation and/or hearing to adequately evaluate the relevant facts. Employees ordinarily will be given an opportunity to explain or defend their actions prior to any disciplinary action.

However, there may be circumstances, where immediate suspension from work may be appropriate, pending further investigation of the facts. Such cases may involve serious employee misconduct, or where risks of personal injury or property damage are present, or where necessary to adequately gather and investigate the facts.

D. Guidance regarding the Cooperative's disciplinary process:

All instances of possible disciplinary action will be handled on an individual basis, taking into account the nature of the offense, the actual and/or potential (reasonably foreseeable) harm or damage involved, and the employee's prior work record.

1. **Counseling.** In most cases of minor misconduct or poor performance, the supervisor will initially discuss the inappropriate behavior or performance problem with the employee. The counseling is intended to make sure the employee understands what is expected, including any applicable rules or standards. The employee will be expected to agree to make necessary improvements or corrections.

The counseling will be documented in writing in the employee's file and the employee will receive a copy.

2. **Warning.** If the problem persists or if other problems develop, the supervisor will ordinarily talk with the employee again about his/her deficiencies and issue a written disciplinary warning to the employee.

The warning will describe the problem, specify the improvement or correction that is expected, establish a time period for improvement (if appropriate), and advise the employee that more serious discipline will occur, if the problem is not corrected.

The employee will be given a copy of the written warning and a copy of the warning will be placed in the employee's personnel file.

3. **Final Warning/Suspension.** If the employee's misconduct or performance problems are not corrected, the next step ordinarily would be a frank discussion between the supervisor and employee and a final warning advising the employee in writing that if the problems are not corrected, he/she may be discharged.

In cases where serious misconduct may be involved, the Cooperative may suspend an employee at this step without pay, generally for up to five (5) days depending on the circumstances. The suspension is intended to (1) Give the employee time to consider whether to voluntarily leave employment with the Cooperative or to agree to perform his or her job duties in compliance with the expectations and standards of the Cooperative, and (2) Give management time to review all the facts and consider possible courses of action regarding continued employment of the suspended employee.

4. **Discharge.** When the Cooperative's efforts to correct the employee's deficiencies have failed or in cases of serious misconduct, the employee will be discharged.

IMPORTANT: Management may modify or skip any of the above discipline steps taking into account the seriousness of the infraction, or any mitigating or aggravating circumstances, or the employee's past work record.

- D. This policy is not intended nor should it be implied to create an employment contract or a guarantee of employment. Employment with the Cooperative is voluntary and may be terminated by the employee or the Cooperative at any time for any lawful reason.

III. RESPONSIBILITY

- A. Supervisors are expected to review all work performance or misconduct problems within their areas of responsibility with their department manager.

Department managers are responsible to review all disciplinary matters involving chronic performance problems or serious misconduct, including recommendations for appropriate action, with the general manager.

Final authority regarding the discharge of any employee rests with the general manager after review of all the pertinent facts and recommendations from appropriate department managers and supervisors.

B.

1. Any employee who believes disciplinary action taken is unjust under this policy may have the matter reviewed by submitting a written request for reconsideration with his/her department manager within one week of written notification of the disciplinary action. Such request for reconsideration should include the basis for the request including any evidence the employee may have to support the request.
2. The department manager will review all pertinent and available evidence and any recommendations from the employee's supervisor. The department will prepare his/her own written recommendation and submit it to the general manager together

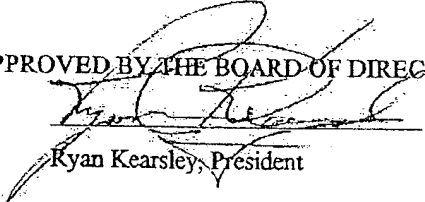
with all relevant back-up information and statements.

3. After reviewing the department manager's recommendations, the general manager at his/her discretion may:
 - a. Schedule a hearing with the employee, his/her supervisor, his/her department manager, and any witnesses whose testimony can amplify or clarify the circumstances of the case
 - b. Decide against reconsideration.
 4. The general manager will issue a letter outlining his findings and decision regarding the appeal. The general manager's decision shall constitute the final action of the Cooperative, and will be transmitted in writing to the employee, his/her supervisor, and all other personnel involved. A copy will be placed in the employee's file.
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IV. PRIMACY OF POLICY:

This policy supersedes any existing policy that may be in conflict with the provisions of this policy. This policy does not represent a contract between the employer and employee, and the employer herein may change the policies alone and without notice.

APPROVED BY THE BOARD OF DIRECTORS


Ryan Kearsley, President

DATE APPROVED: October 18, 2004

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

GENERAL POLICY NO. 615.0

SUBJECT: TERMINATION OF EMPLOYMENT

I. PURPOSE:

Although it is desirable for the continuity of operation of the Cooperative to have as few changes of personnel as possible, it must be recognized that such changes will occur. The purpose of this policy is to detail the special circumstances pertaining to the termination of employment with the Cooperative of its employees.

II. POLICY

It shall be the policy of Fall River Rural Electric Cooperative, Inc. to make termination payments to employees leaving the employ of the Cooperative according to the provisions given in this policy.

III. RESPONSIBILITY:

The General Manager

IV. PROVISIONS:

The following provisions and procedures shall apply to this policy:

A. Resignations

Regular and probationary employees shall give the Cooperative a minimum of two weeks advance notice in the event they decide to terminate their employment with the Cooperative. Voluntary terminations, when such notice has been given, will receive a cash payment for accrued and unused vacation leave credits, up to a maximum limit of credits. Should the termination be within the first year the cooperative will not pay any moving expenses incurred when the employee was hired.

B. Lay-Off of Employees

If, because of lack of work, it is necessary to lay-off a regular employee, he (she) will be given:

1. Two weeks notice or the cash equivalent
2. A cash payment for any accrued and unused vacation leave credits up to the maximum number of credits
3. Priority in consideration for any subsequent vacancy for which he (she) is qualified
4. Credit for prior service toward seniority and other length of

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service benefits upon subsequent re-employment

C. Seniority shall terminate for any of the following reasons:

- a. Voluntary quitting
- b. Discharge for cause
- c. Absence from work for more than two days, except for authorized sickness or granted leave of absence
- d. Continuous lay-off for a period in excess of twelve months duration
- e. Failure to report for work upon recall within four days after notification by letter or telephone to the last address furnished in writing by the employee to the Cooperative

D. Discharge of Employees

If it becomes necessary to discharge an employee, he (she) shall be informed in writing of the action and of his (her) rights and privileges, subject to the following conditions

1. New Employees

The Cooperative reserves the right to discharge a probationary employee, with or without cause, at any time up to the time that he (she) has completed six months employment if paid on an hourly basis, or twelve months if paid on a salaried basis, but with the following provisions:

- a. Unless he (she) deliberately disregards Cooperative regulations and his (her) continued employment would be to the detriment of the Cooperative, two weeks' notice or the cash equivalent will be given

2. Regular Employees

A regular employee may be discharged only for cause and shall receive:

- a. Two weeks' notice or the cash equivalent
- b. The cash equivalent for accrued and unused vacation leave credits up to the maximum number credits

D. Approvals

The General Manager shall approve the amounts to be paid to employees upon termination

This policy supersedes any existing policy which may be in conflict with the provisions of this policy.

DATE ADOPTED: March 14, 1977
DATE EFFECTIVE: March 14, 1977

APPROVED BY THE BOARD OF DIRECTORS

Vernon Christoffersen
Vernon Christoffersen President

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

GENERAL POLICY NO. 616.0

SUBJECT: EMPLOYEE SENIORITY

I. PURPOSE:

It is recognized that length of service to the Cooperative is an asset, and that the employees of the Cooperative need to be recognized for length of service.

II. POLICY:

When in the fair and impartial judgement of the management of the Cooperative, skill, merit, ability, fitness and efficiency are substantially equal, seniority with the Cooperative shall govern in making promotions, demotions, transfers, lay-offs and recalls.

III. RESPONSIBILITY:

The General Manager and Department Heads

IV. EMPLOYEE DEFINITIONS:

A. Regular employee:

All Company benefit programs are available to employees working in a continuous (e.g.: 40 hour work week) employment classification.

B. Regular Part-time Employee:

Employment in a regularly constituted job requiring four or more hours of work each day of a regular work week. All Company benefit programs are available to this classification after completion of 1,000 hours of work in the first 12 months of employment.

C. Temporary Employee:

Includes all employees not covered by A or B above, specifically includes employees hired for periods with known ending dates such as-summer vacation

relief, construction and student employment benefits are strictly limited to those programs required by Law.

V. PROVISIONS:

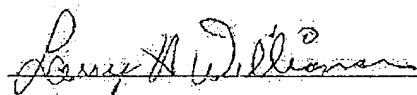
The following provisions and conditions shall apply to this policy:

- A. Seniority shall be deemed to accrue from the date of hire with past temporary and/or part-time work prorated back from the date the employee last began continuous work. No seniority will be accrued during layoff periods.
- B. If an employee, deemed satisfactory in the probationary period, were discharged through no fault of his own, then he would be eligible to be rehired during the following six months. After that time, the Company would be under no obligation to said employee for rehiring purposes. However, if employee is re-employed within the space of two years, he retains his seniority with the exception of the layoff period.
- C. Seniority shall terminate for any of the following reasons:
 - 1. Voluntary quitting.
 - 2. Discharge for cause.
 - 3. Absence from work for more than two days, except for authorized or excused absence.
 - 4. Continuous layoff for a period in excess of two years duration.
 - 5. Failure to report to the Cooperative within four days or to report to work within two weeks after notification by letter or telephone to the last address furnished in writing by the employee to the Cooperative.
- D. Vacations shall be scheduled according to seniority during the more desirable vacation period as the requirements of the service permits. Management's judgement as to the requirements of service shall be final.

VI. PRIMACY:

This policy supersedes any existing policy that may be in conflict with the provisions of this policy. This policy does not represent a contract between the employer and employee, and the employer herein may change the policies alone and without notice.

APPROVED BY BOARD OF DIRECTORS



Larry Williamson, President

DATE APPROVED: April 26, 2004

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.
SENIORITY LIST
April 26, 2004

Employee Name:	Employee Date of Hire:
1. Jeffrey Hastings	01/14/63
2. Weston Ball	12/28/63
3. Dee Reynolds	03/10/65
4. Layle Bergeson	09/27/67
5. Brent Ripplinger	03/09/71
6. Edwin Wood	03/09/71
7. Jeffery Beard	09/10/73
8. Kim Niendorf	01/15/74
9. Stan Hansen	04/11/74
10. Leonard Hull	10/09/74
11. Trent Yancey	05/12/75
12. Larry Hamilton	10/03/76
13. Kerry Huntsman	06/23/80
14. Kyle Tonks	08/08/80
15. James Nash	08/13/80
16. Layne Armstrong	02/22/81
17. Renee Heward	01/04/82
18. Linda Bogetti	04/26/83
19. Cathy Dixon	10/22/84
20. David Peterson	07/01/85
21. Rondo Winters	04/11/86
22. Teresa Griffel	06/17/86
23. David Stone	01/20/87
24. Brian Curr	04/26/87
25. Tyrell Teeples	06/18/87
26. Suzette Bollinger	10/20/88
27. Randy Farmer	11/01/89
28. Brett Eckman	08/08/90
29. Sandi Bowersox	09/14/92
30. Patty Nedrow	09/14/92
31. Billy Joe Angell	10-31-94
32. Wendi Celino	05/15/95
33. Jan Dean	07/17/95
34. Rayla Hathaway	09/29/95
35. John Grube	12/31/96
36. Larry Stone	03/17/97
37. Carol Jones	04/17/98
38. Brandy Burlage	04/19/99

39.	Kathy Bollinger	06/03/99
40.	Laurice Bittner	05/30/00
41.	Shannon Hill	06/20/00
42.	Amy Greene	06/22/00
43.	Mickie Funke	07/11/00
44.	David Trosen	01/03/01
45.	Melissa Hathaway	01/29/01
46.	JT Hill	09/03/01
47.	Merlin Hobbs	09/10/01
48.	Jeff Jacobsen	09/24/01
49.	Brent Garnett	12/11/01
50.	Richard E. Phillips	12/17/01
51.	Jeremy Banta	01/02/02
52.	"J.R." Julia Ray Wood	06/01/02
53.	Brad Amen	07/28/03

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.

GENERAL POLICY NO. 625.0

SUBJECT: ANTI-HARASSMENT

I. PURPOSE:

- A. To clearly state the policy of the Cooperative regarding harassment on the basis of race, color, religion, sex, national origin, age or disability.
- B. To provide specific grievance and investigatory procedures to be followed when an employee feels he/she has been harassed; and
- C. To inform employees that violation of this policy will result in discipline up to and including termination.

II. POLICY CONTENT:

The Cooperative prohibits harassment on the basis of race, color, religion, sex, national origin, age or disability or other legally protected classifications, and will provide all Cooperative employees and applicants with protection against harassment in the workplace. All employees must avoid offensive or inappropriate behavior at work.

III. PROVISIONS:

- A. "Harassment" is verbal or physical conduct that denigrated or shows hostility or aversion toward an individual because of his/her race, color, religion, sex, national origin, age or disability or that of his/her relatives, friend or associates and that:
 - 1. Has the purpose or effect of creating an intimidating, hostile or offensive working environment;
 - 2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
 - 3. Otherwise adversely affects an individual's employment opportunities.
- B. "Harassing conduct" includes but is not limited to the following:
 - 1. Epithets, slurs, negative stereotyping, or threatening, intimidating, or hostility that relate to race, color, religion, sex, national origin, age or disability, and
 - 2. Written or graphic material that denigrates or shows hostility or aversion

toward an individual or group because of race, color, religion, sex, national origin, age or disability and that is placed on walls, bulletin boards, or elsewhere on the employer's premises or circulated in the workplace.

- C. Any and all activities described in Section III. A. and B. are expressly prohibited. However, the behavior and conduct specified are examples only and are not intended to be an all-inclusive list of what the Cooperative may determine to be harassment under this policy.
- D. Any employee who feels that he/she is a victim of harassment or who observes or otherwise has reason to believe that harassment is occurring in the Cooperative's workplace is encouraged to immediately report the matter to any appropriate management official with whom they feel comfortable talking. The following reporting procedures are suggestions only. In the event that an allegation of harassment is made against the employee's supervisor, the employee should report the matter directly to the General Manager. Any allegation of harassment against a Board member should be reported directly to the General Manager. If an allegation of harassment is made against the General Manager, a report should be made immediately to the President of the Board and/or the Cooperative's attorney. If an employee is not satisfied with the initial management response to his/her report, her/she should bring the matter to the attention of the General Manager, President of the Board of the Cooperative's attorney for an additional response.
- E. Harassing conduct may occur between an employee and a non-employee, as well as between co-workers. If an allegation of harassment is made against a non-employee (such as a vendor, subcontractor, supplier, consultant, or consumer), the General Manager will investigate and take prompt and appropriate corrective action.
- F. Harassment complaints, reports and grievances will be promptly investigated. The investigation will be conducted on a confidential basis to the extent practicable under the circumstances. The Cooperative's attorney may be consulted for advice, and all personnel are expected to cooperate fully in investigations. When appropriate, the results of the Cooperative's investigation and its recommendations will be discussed with the complainant before any action is taken.
- G. Upon completion of the Cooperative's investigation, the following procedure will be used;
 - 1. Except as otherwise provided below, the results and recommendations of the Cooperative's investigation will be forwarded to the General Manager for a final decision. After reviewing the investigation's results and recommendations, the General Manager will make a decision as to the appropriate resolution of the harassment allegation.
 - 2. If an allegation of harassment is made against the General Manager, or if an

employee is not satisfied with the General Manager's response to a report of harassment, the employee shall bring the matter directly to the attention of the President of the Board and/or the Cooperative's attorney. The President of the Board shall then attempt to resolve the matter with the General Manager. If an allegation of harassment is made against a Board member, a report of the Cooperative's investigation shall be submitted to the General Manager, and the General Manager shall bring the investigation's results and recommendations to the attention of the entire Board. The Board as a whole shall then attempt to resolve the matter with the Board member.

- H. Each department head will meet with his/her employees as frequently as is necessary, but at least annually, to explain the provisions of this policy and the Cooperative's intolerance of harassment.
- I. Any employee violating this policy may be subject to immediate discipline ranging from a written warning to discharge, depending upon the severity of the violation and whether it is a first-time or repeat offense.

No employee will be retaliated against for filing a grievance or complaint alleging harassment or for participating in an investigation.

IV. RESPONSIBILITY:

- A. The Board, General Manager, department managers, and supervisory personnel are responsible for the administration of this policy.

V. PRIMACY OF POLICY:

This policy supersedes any existing policy that may be in conflict with the provisions of this policy. This policy does not represent a contract between the employer and employee, and the employer herein may change the policies alone and without notice.

APPROVED BY THE BOARD OF DIRECTORS


Board President
Boyd Bowles

DATE EFFECTIVE: March 30, 2009

EXHIBIT 9

**SUZETTE BOLLINGER'S
MARCH 4, 2010
DEPOSITION**

PAGES: 7, 8, 10, 11, 14, 15, 17, 162, 163, 164,
186, 188, 190, 209, 210, and 211

DEPOSITION OF SUZETTE BOLLINGER - 03/04/2010

SHEET 2 PAGE 5

1 (SUZETTE BOLLINGER, after having been
 2 duly sworn, testified as follows:)
 3 (The deposition proceeded at 9:57 A.M. as
 4 follows:)
 5 EXAMINATION
 6 BY MR. BARRETT:
 7 Q. Good morning, Ms. Bollinger. My name
 8 is Jim Barrett. I'm an attorney for Fall River
 9 Rural Electric Cooperative. I'm going to call it
 10 Fall River today.
 11 To my left is Bryan Case, a
 12 representative from Fall River.
 13 To your right is your attorney, Mr.
 14 John Ohman.
 15 Could you state your name for the
 16 record, please?
 17 A. Suzette Y. Bollinger.
 18 Q. And your current address of residence?
 19 A. 1601 Grand View Lane, Ashton, Idaho.
 20 Q. Ms. Bollinger, have you ever had your
 21 deposition taken?
 22 A. No.
 23 Q. I'm sure you've had an opportunity to
 24 discuss some of the ground rules with Mr. Ohman.
 25 I'm going to go over some of those

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1 rules now.
 2 It's a question/answer format. I ask
 3 the questions and you need to give me a full and
 4 complete answer to the best of your ability.
 5 Do you understand?
 6 A. Yes.
 7 Q. There are a couple of rules that we
 8 need to follow for the sake of the court reporter
 9 so that the record is clear.
 10 One of those is that, when you answer a
 11 question, that you do so audibly with a yes or a
 12 no and not with a shake of the head or an uh-huh
 13 (Yes) or an huh-uh (No).
 14 Do you understand?
 15 A. Yes.
 16 Q. And the other thing that we need to be
 17 careful about is that we not step on each other;
 18 in that you let me finish my question before you
 19 answer; and that I let you finish your answer
 20 before I ask the next question.
 21 Do you understand?
 22 A. Yes.
 23 Q. And it can be difficult because
 24 sometimes I'll ask a question and you know the
 25 answer before I finish and it's just natural to

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1 want to go ahead and give that. But, please,
 2 wait for me to finish.
 3 Do you understand?
 4 A. Yes.
 5 Q. Okay. Do you understand that you're
 6 under oath today just as if you were in court
 7 before the judge and the jury?
 8 A. Yes, I do.
 9 Q. Okay. And what that means is that if
 10 you say anything later that is inconsistent with
 11 what you say today, that I can point out that
 12 inconsistency.
 13 Do you understand?
 14 A. I do.
 15 Q. Okay. Is there -- are you suffering
 16 from any illness or taking any medication or is
 17 there any other reason today that you would not
 18 be able to recall events or focus?
 19 A. I am taking medication, but it should
 20 not affect me in a derogatory manner.
 21 Q. What medication are you taking?
 22 A. I take Allegra.
 23 Q. Can you spell that, please?
 24 A. A-L-L-E-G-R-A.
 25 I am taking Celexa, C-E-L-E-X-A, which

PAGE 8

1 is an anti-depressant.
 2 I am taking Synthroid,
 3 S-Y-N-T-H-R-O-I-D.
 4 And I am taking Cytomel, C-Y-T-O-M-E-L.
 5 The two latter are for thyroid issues.
 6 Q. So, none of those medications would
 7 affect your ability to focus or recall events
 8 today; is that correct?
 9 A. No, I don't believe so.
 10 Q. Okay. We can take a break at any time.
 11 And I'm going to take a break when I feel like it
 12 and you should feel free to do the same.
 13 The only rule is that if there's a
 14 question pending, you need to answer it before
 15 you take a break.
 16 Do you understand?
 17 A. I do.
 18 Q. Okay. Sometimes my questions may not
 19 be very clear. If that's the case, you do not
 20 understand what I'm asking, please ask me to
 21 restate and I will.
 22 Will you do it that?
 23 A. Yes, I will.
 24 Q. If you answer the question that I ask,
 25 I'm going to assume that you understood it.

1 Is that fair?
 2 A. Yes.
 3 Q. I do need an answer to all my
 4 questions.
 5 The only time in which you would not
 6 have to answer my question is if you receive a
 7 specific direction from your counsel.
 8 Do you understand?
 9 A. Yes.
 10 Q. Okay. The goal today is for me simply
 11 to learn the facts about the allegations that
 12 you've made in your Complaint against Fall River.
 13 This is my opportunity... my one
 14 opportunity to do that before trial.
 15 And, so, it's important that you give
 16 me a complete answer to my questions and,
 17 hopefully, we won't be here all day. Okay?
 18 A. Okay.
 19 Q. All right. I want to talk just a
 20 little bit about your background.
 21 Can you give me your educational
 22 background, please?
 23 A. I went to high school at North Fremont
 24 High School in Ashton.
 25 I completed one year of college at

1 Loss/Facility Director.
 2 Q. Okay. Thank you for that
 3 clarification.
 4 A. I was never given the title of Manager.
 5 Q. Do you recall the date that you assumed
 6 that position of Safety & Loss/Facility Director?
 7 A. February 26, 2008.
 8 Q. Immediately prior to assuming that
 9 position, what position had you held with Fall
 10 River?
 11 A. I believe that my title at that time
 12 was Energy Analyst Member Service Rep.
 13 Q. And how long had you been in that
 14 position?
 15 A. Probably about 16 years, 17 maybe.
 16 Q. And what were your primary duties and
 17 responsibilities there?
 18 A. I was over the cell phone program.
 19 And I did energy analysis for
 20 customers.
 21 I did a lot of conservation programs.
 22 I was responsible for conductor/heater
 23 sales and assisted with water heaters.
 24 The annual meeting was a big part of my
 25 position... my job. I did a lot of planning and

1 Ricks College University -- well, they weren't a
 2 university at the time -- Ricks College in
 3 Rexburg, Idaho where I received a one-year
 4 certificate in business mid-management.
 5 And since that time, I have taken
 6 numerous courses from upper Iowa University as
 7 correspondence in the business field.
 8 Q. And what is your age, please?
 9 A. 45.
 10 Q. And when did you start working for Fall
 11 River?
 12 A. October 20, 1988.
 13 Q. And your position there when you
 14 started?
 15 A. Cashier/receptionist.
 16 Q. And having reviewed the discovery that
 17 was prepared by the Fall River, I'm aware that
 18 you were promoted at times and held various
 19 positions over the years.
 20 But what we're going to focus on today
 21 is the period of employment immediately preceding
 22 your layoff in 2009, at which time you were in
 23 the position of Safety Director and Facilities
 24 Manager, correct?
 25 A. I was told that my title was Safety &

1 preparation for that meeting and worked with
 2 others on that event.
 3 Q. Explain to me the annual meeting in
 4 terms of who was in attendance and what was the
 5 purpose.
 6 A. The purpose of the annual meeting is a
 7 time to bring the members in so that they can
 8 have a financial reporting of the -- or not just
 9 a financial reporting, but also they can be given
 10 a synopsis, I guess, of what's going on in the
 11 cooperative because they are actually the owners.
 12 And our annual meeting, ever since we
 13 moved into our building out on the highway, has
 14 been a Wellness Health Fair for our members; as
 15 well as the business meeting. And we have either
 16 done a lunch or a breakfast.
 17 It served many members.
 18 Q. What month does it typically occur?
 19 A. Recently it was switched to June.
 20 But prior to that, it was held in
 21 August.
 22 And prior to that, it was in October.
 23 Q. And who was your supervisor, if you had
 24 more than one and you can recall in chronological
 25 order, that would be helpful.

1 But your supervisor while you were the
 2 Energy Analyst/Member Service Representative?
 3 A. It started out as Steve Knapp.
 4 And then he retired and Mickie Funke
 5 was hired to take his place.
 6 MR. OHMAN: Let's give our reporter
 7 some spellings while we have it here.
 8 THE WITNESS: Steve Knapp, K-N-A-P-P;
 9 and Micki, M-I-C-K-I-E; Funke, F-U-N-K-E.
 10 BY MR. BARRETT:
 11 Q. And Mickie Funke was your direct
 12 supervisor at the time you made the transition to
 13 the Safety & Loss/Facility Director position?
 14 A. Yes.
 15 Q. What was it that caused you to make
 16 this transition to the Safety & Loss/Facility
 17 Director?
 18 A. It was an increase in pay, for one
 19 thing.
 20 But I had also helped with the Safety &
 21 Loss Program for many years.
 22 Even though I was supervised by Mickie,
 23 I worked with Larry Hamilton taking the minutes,
 24 preparing documentation. I prepared the minutes
 25 and the agendas for him.

1 I worked with the Operations Manager to
 2 order those things.
 3 There were things like Ibuprofen and
 4 different medicines that we kept in that cabinet,
 5 as well, that fell under his direction.
 6 Q. Operations Manager and Larry Hamilton
 7 are one in the same, correct?
 8 A. Correct.
 9 Q. And when you were engaged in your
 10 activities with respect to the Safety & Loss
 11 Programs, you were under the direction and
 12 supervision of Larry Hamilton?
 13 A. That would be correct, although, he was
 14 never officially named as a Supervisor.
 15 Q. Who was in the position of the Safety &
 16 Loss/Facility Director prior to your assuming it
 17 in February of 2008?
 18 A. Richard Reynolds was the Safety
 19 Director for many years.
 20 And upon his leaving the Cooperative,
 21 the duties of Safety Director were turned over to
 22 the Operations Manager.
 23 At the time of Richard's departure, it
 24 was Westin Ball, who was acting as the Operations
 25 and Engineering Manager.

1 I just helped out in the safety area a
 2 lot; and, so, I had some background in that and I
 3 knew a lot of the things that had been going on
 4 through the years.
 5 And when I realized that I could apply
 6 for the position, I did.
 7 Q. I saw in a lot of the minutes that were
 8 created, while you were in the Safety &
 9 Loss/Facility Director, were created by a Joan or
 10 Joni Amen.
 11 A. That's correct.
 12 Q. So, were you, basically, doing what she
 13 did for you in taking the minutes?
 14 A. I was doing, yes, what she does now.
 15 Q. Okay. And in addition to taking the
 16 minutes at the safety meetings, how else were you
 17 involved in the Safety & Loss Programs at Fall
 18 River before you took the position of Safety &
 19 Loss/Facility Director?
 20 A. I ordered a lot of the personal
 21 protective equipment. I shouldn't say a lot. I
 22 ordered supplies for the safety cabinet; such as,
 23 safety glasses -- oh, what are they called -- ear
 24 plugs, medicines, things like that that we kept
 25 in the first aid cabinet.

1 And then when the Operations Manager
 2 position was split out, Larry Hamilton was hired
 3 and he was the acting Safety Director.
 4 Q. So, Larry Hamilton, if I follow your
 5 testimony, had the responsibility for Safety &
 6 Loss at the time that you assumed the position in
 7 February of 2008?
 8 A. Correct.
 9 Q. And he had had that responsibility for
 10 how many years, to your knowledge?
 11 A. I don't know.
 12 Q. Had it been --
 13 A. Five.
 14 Q. Okay.
 15 A. Six, maybe.
 16 Q. Several years.
 17 A. Uh-huh. (Yes)
 18 MR. OHMAN: Yes?
 19 THE WITNESS: Yes.
 20 Sorry.
 21 BY MR. BARRETT:
 22 Q. He didn't leave upon your assuming the
 23 role of Safety & Loss/Facility Director, so...
 24 that's my understanding.
 25 So, this was a -- they were taking

1 those responsibilities away from Mr. Hamilton and
 2 making them exclusively -- or a separate position
 3 for a separate person.
 4 Is that accurate?
 5 A. That is correct.
 6 Q. Okay. Do you know why they decided to
 7 do that... Fall River?
 8 A. I believe that was on recommendation
 9 from a survey that was conducted by the National
 10 Rural Electric Cooperative Association that was
 11 done in 2007.
 12 And at that time, they said that those
 13 duties should be split from the Operations
 14 Manager.
 15 Q. I think I saw that recommendation in
 16 the discovery. There's a document to that
 17 effect.
 18 Okay. And how did they go about --
 19 Fall River -- I'm saying "they," but I want to be
 20 specific.
 21 How did Fall River go about filling the
 22 position? Did they post it such that anybody
 23 could apply?
 24 A. It was listed with the Human Resource
 25 Consultant... I guess you would call her...

1 interview and when I was offered the position.
 2 Q. Who conducted the interview from Fall
 3 River for you?
 4 A. The interview was mediated, I guess, by
 5 Dee Reynolds, who was the Manager at the time.
 6 And then there was a hiring committee.
 7 And, as I recall, Patty Nedrow, N-E-D-R-O-W;
 8 Billy Jo Angell; Dave Peterson; Larry Hamilton;
 9 Brent Gammett -- I think that's all I can -- oh,
 10 Kerry Huntsman, I think.
 11 And those are the ones that I remember.
 12 Q. All right. We've identified Larry
 13 Hamilton.
 14 And Dee Reynolds, you said he was the
 15 Plant Manager at the time.
 16 A. He was the former General Manager.
 17 Q. Former General Manager.
 18 A. Yes.
 19 Q. He was succeeded by Bryan Case; is that
 20 correct?
 21 A. Yes, that's correct.
 22 Q. These other individuals that you've
 23 named, were they board members?
 24 A. No. Fellow employees.
 25 Q. Who had been selected or volunteered

1 Melanie Nichols.
 2 And between she and Mickie Funke, they
 3 prepared an advertisement that was put in the
 4 paper and it was open to people inside the
 5 Cooperative and outside the Cooperative.
 6 There were four people that were
 7 interviewed.
 8 Q. Including yourself?
 9 A. Yes.
 10 Q. Who were the other three, if you know?
 11 A. There was one gentleman by the name of
 12 Ron Reynolds.
 13 And John Grube, who was also an
 14 employee.
 15 And the other one I don't remember.
 16 Q. So, you recall a Ron Reynolds, a John
 17 Grube and a third individual.
 18 A. And I don't remember his name.
 19 Q. It was a man?
 20 A. Yes.
 21 Q. And did the interviews take place in
 22 January of '08?
 23 A. I believe it was the first part of
 24 February of '08.
 25 There wasn't very much time between the

1 for a hiring committee?
 2 A. They had been selected, as far as I
 3 know.
 4 Some of them were actually alternates.
 5 Because the weather was inclement that day and
 6 some of the individuals who were supposed to be
 7 there, could not be there. They couldn't get
 8 through. The highway was closed.
 9 Q. Dee Reynolds, you said, mediated the
 10 process. So, he led the --
 11 A. Yes.
 12 Q. And you say it was a short time after
 13 your interview when you were informed that you
 14 had been selected for the position.
 15 A. Yes.
 16 Q. And who was it that informed you?
 17 A. Dee Reynolds and Larry Hamilton.
 18 Q. Approximately, how long after you
 19 assumed the position of Safety & Loss/Facilities
 20 Director in February of 2008 was Dee Reynolds
 21 succeeded by Mr. Case?
 22 A. Approximately, 10, 11 months.
 23 Q. Did Mr. Case assume his
 24 responsibilities as of the first of the year
 25 2009? Do you know?

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 2 making them exclusively -- or a separate position
 3 for a separate person.
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 20 correct?
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 23 named, were they board members?
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 13 And John Grube, who was also an
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 15 And the other one I don't remember.
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 19 assumed the position of Safety & Loss/Facilities
 20 Director in February of 2008 was Dee Reynolds
 21 succeeded by Mr. Case?
 22 A. Approximately, 10, 11 months.
 23 Q. Did Mr. Case assume his
 24 responsibilities as of the first of the year
 25 2009? Do you know?

1 week.
 2 And I was talking to him about my plans
 3 to leave for vacation later that week.
 4 And he asked me to draft these memos
 5 but not send them out.
 6 He wanted me to get him a copy first so
 7 that he could review them, I presume, and he
 8 would not allow me to send them.
 9 **Q. And did he give you any explanation as**
 10 **to why?**
 11 A. Not that I recall.
 12 **Q. Did he give you any explanation -- I**
 13 **guess I should be more specific -- as to why you**
 14 **could not send them?**
 15 A. No.
 16 **Q. Any explanation as to why this decision**
 17 **had been made?**
 18 A. No.
 19 **Q. So, it was just a simple directive:**
 20 **Take care of these issues; one, two, three?**
 21 A. Yes.
 22 **Q. Did you, in fact, have an opportunity**
 23 **to draft the memos before you were laid off?**
 24 A. Yes.
 25 **Q. And did you provide those memos to Mr.**

1 **recollection, were you told?**
 2 A. That my position had been eliminated
 3 and that I needed to gather my things and leave.
 4 **Q. And anything else?**
 5 A. They mentioned that they were offering
 6 me a severance package and they handed me
 7 documents that I could look over.
 8 I think maybe Mickie ran through those
 9 quickly to tell me what was in them.
 10 They told me that I would be eligible
 11 for COBRA insurance.
 12 They did not, however, tell me that
 13 they were cancelling my insurance that day, the
 14 day that I was leaving on vacation.
 15 I asked them if I was eligible for
 16 unemployment and Mr. Case said we have decided to
 17 let you claim unemployment.
 18 **Q. Were you told that you would be allowed**
 19 **to take the documents you were provided home with**
 20 **you?**
 21 A. Yes.
 22 **Q. They were not asking you to sign**
 23 **anything that day, correct?**
 24 A. That's correct.
 25 **Q. Anything else said at this meeting?**

1 **Hamilton?**
 2 A. I did.
 3 **Q. What about the handrail issue, did you**
 4 **have an opportunity to resolve that issue before**
 5 **you were laid off?**
 6 A. No, I did not. I was waiting on
 7 another bid to see if we could get it any
 8 cheaper.
 9 That was a bid that I had not been
 10 asked to procure. One that I did on my own.
 11 **Q. Okay. All right. You were informed**
 12 **that the company was laying you off and**
 13 **eliminating your position on July 28th of 2009,**
 14 **correct?**
 15 A. Yes.
 16 **Q. Explain to me how that communication**
 17 **was made to you.**
 18 A. I was taken into Bryan's office by my
 19 Supervisor, Larry Hamilton, and I was informed
 20 that I no longer worked there.
 21 **Q. So, let me be clear. Who all was in**
 22 **attendance at this meeting to convey this**
 23 **information to you?**
 24 A. Bryan, Mickie Funke and Larry Hamilton.
 25 **Q. What specifically, to the best of your**

1 A. Not that I recall.
 2 **Q. When you were told that you needed to**
 3 **collect your things and leave, were there any**
 4 **guidelines provided to you as to how that would**
 5 **happen?**
 6 A. Not that I recall.
 7 **Q. Did anybody accompany you in order to**
 8 **accomplish that?**
 9 A. Mickie Funke and Larry Hamilton did.
 10 And they watched me as I tried to
 11 gather my things and then they told me that I had
 12 to hurry because they had a meeting to go to and
 13 that I needed to get this done.
 14 And they started taking things off of
 15 my counter and off of my walls and putting them
 16 in boxes.
 17 They wouldn't let other employees come
 18 in to console me except that Joni pushed past
 19 Larry and came in and gave me a hug; and so did
 20 Rondo Winters.
 21 They gave me 30 minutes to clean out 21
 22 years. 21 years. 30 minutes.
 23 **Q. Did they tell you that that's the time**
 24 **that you had allotted to you?**
 25 A. No. But that's what they gave me and

1 Do you remember receiving and reviewing
 2 this e-mail at the time?
 3 A. I paid particular attention to the
 4 first two.
 5 I didn't pay a lot of attention to 624.
 6 But the first two, yes, I did.
 7 Q. And that makes sense, as they both
 8 relate to a subject matter over which you had
 9 responsibility as the Safety Director, correct?
 10 A. Correct.
 11 Q. Were you involved, in any way, in the
 12 shaping of the policies as they were presented to
 13 the Board?
 14 A. I had actually written a Flame
 15 Resistant Clothing Policy and submitted it to
 16 both Bryan and Larry Hamilton. And nothing was
 17 done about it.
 18 In fact, later Larry told me that it
 19 was no good and that he shouldn't have left it to
 20 me to write anyway.
 21 And then he rewrote this 417. I don't
 22 know if Bryan made any changes to that one or
 23 not.
 24 And on 413.10, Larry and I worked
 25 together to make changes on the old policy and

1 Policy 417. Down at the very bottom right, it's
 2 Fall River 00682.
 3 A. You'll notice that there's no safety
 4 protective footwear on here or gloves.
 5 Q. I was going to ask you about that,
 6 actually.
 7 There's rubber insulated gloves. Are
 8 we talking about something different?
 9 A. Absolutely different.
 10 Q. With a leather covering?
 11 A. Those are high voltage gloves that the
 12 linemen use when they're working on energized
 13 equipment or potentially energized equipment to
 14 give them an added layer of protection against
 15 being electrocuted or shocked.
 16 Q. There's also the mention of toe
 17 protection/metatarsal guards.
 18 A. Those are the most ridiculous thing you
 19 will ever see in your life.
 20 They are a hard metal protective
 21 covering that people are supposed to put on their
 22 boots when they go out into the warehouse.
 23 And they are so difficult to wear that
 24 they have hung on a rack in the warehouse for 10
 25 years and have never been taken down. Never.

1 submitted those to Bryan.
 2 And when it came back, there was
 3 absolutely no reference to a Safety Director of
 4 any kind, where there had been before.
 5 And I asked Larry at that time if I was
 6 going to lose my job.
 7 And he said he didn't know.
 8 Q. Was there some anxiety at the time,
 9 generally, at Fall River with respect to whether
 10 anybody would be losing their job?
 11 A. There had been a memo put out at about
 12 this time offering early retirement to
 13 individuals.
 14 And I remember having a conversation
 15 with one other employee that. If this is the way
 16 that they're going to cut costs, the people don't
 17 accept it. What will they do next? Will they
 18 lay people off? And we both agreed that they
 19 might.
 20 But I didn't feel there was any reason
 21 for me to be afraid for my job because of the
 22 Standing Seniority Policy and having been there
 23 for 21 years, longer than most of the other
 24 employees.
 25 Q. Okay. There is an Exhibit A to the

1 Not even to dust.
 2 Q. But you would agree, as of June 3rd,
 3 this would pre-date by a month the memo that you
 4 drafted recommending that personal protective
 5 footwear be required, correct?
 6 A. Correct.
 7 (Exhibit No. 24 marked.)
 8 BY MR. BARRETT:
 9 Q. I've handed you Exhibit 24.
 10 This is the Employee Seniority General
 11 Policy Number 616.
 12 Is this the Seniority Policy that you
 13 were referring to just recently?
 14 A. Yes.
 15 Q. So, this is a policy that you had had
 16 access to at some point and been able to review?
 17 A. Yes.
 18 Q. Okay. And your understanding of this
 19 policy was that it wouldn't have protected you
 20 from downsizing because... why?
 21 A. Restate your question, please.
 22 Q. All right.
 23 You said you felt that if there were
 24 going to be layoffs that it would not affect you
 25 because of the seniority that you had with the

1 company. I believe you said that in so many
 2 words.
 3 And I'd like you to explain why that
 4 is.
 5 A. Because for 21 years I had worked there
 6 and had no adverse statements made in my
 7 personnel policy. I did my job like I was
 8 supposed to.
 9 And this policy -- I don't know where
 10 the provision is that I was looking at.
 11 Q. It doesn't matter. This is more of a
 12 lawyer-type thing, anyway.
 13 The policy would either entitle you to
 14 certain rights or it wouldn't. And maybe we'll
 15 have a disagreement about that or maybe we won't.
 16 But this is the policy that you were
 17 referring to?
 18 A. This is the policy.
 19 There is another one that talks about
 20 employee discharge and that -- or even hiring and
 21 relocating and other things that say your
 22 seniority will be considered.
 23 Q. Is this something that you were asked
 24 to sign off on?
 25 A. No, I don't remember signing off on

1 Q. I've handed you Exhibit No. 25.
 2 This is another e-mail similar to the
 3 one that we reviewed two exhibits ago, again,
 4 from Mickie Funke to -- it looks like all the
 5 employees at Fall River.
 6 A. Second row from the bottom, in the
 7 middle.
 8 Q. Thanks again.
 9 You're a recipient. Do you remember
 10 ever receiving this e-mail?
 11 A. Yes. And I paid particular attention
 12 to the sexual harassment document and the anti-
 13 harassment document because I had --
 14 Q. And --
 15 A. I'm sorry.
 16 Q. I'm sorry. Go ahead.
 17 A. Because I had been involved in an issue
 18 with sexual harassment and I had reported an
 19 instance on a couple of different occasions. So,
 20 I paid particular attention to that one.
 21 And then I had been trying to get them
 22 to train on harassment for awhile because of some
 23 of the other things that had happened.
 24 And I didn't pay much attention to the
 25 at-will policy.

1 this ever.
 2 Q. But it's something that,
 3 notwithstanding that these policies were
 4 collectively in a vault somewhere, you were
 5 afforded an opportunity to review?
 6 A. Yes.
 7 And I would also like to note that the
 8 seniority list is not correct. I am not number
 9 26 on the list anymore. I was 18.
 10 And there are numerous employees who
 11 are not on this list. This has not been updated
 12 for years. Six years, seven years, something
 13 like that.
 14 MR. OHMAN: It's dated at the bottom
 15 April 26, 2004.
 16 A. Oh, it's right there under Policy.
 17 When, in the fair and impartial judgment of the
 18 management of the Cooperative, skill, merit,
 19 ability, fitness and efficiency are substantially
 20 equal, seniority with the Cooperative shall
 21 govern in making promotions, demotions,
 22 transfers, layoffs, and recalls.
 23 Q. Okay.
 24 (Exhibit No. 25 marked.)
 25 BY MR. BARRETT:

1 Q. Did you look at it at all?
 2 A. I don't remember for sure.
 3 Q. I saw evidence that training had been
 4 conducted by Mickie Funke with respect to sexual
 5 harassment. It's contained within the minutes of
 6 a few of the Safety Meetings in 2009.
 7 Is that correct, that the training
 8 actually did occur with respect to sexual
 9 harassment?
 10 A. I believe that she followed up on the
 11 training that was given in January by a
 12 representative from ISU at our all-employee
 13 meeting that was held in West Yellowstone,
 14 Montana on Martin Luther King Day.
 15 Q. Were there any active issues with
 16 respect to sexual harassment?
 17 I did see the reports that you made in
 18 the file.
 19 I don't see any particular need to
 20 introduce them as exhibits?
 21 But were there any ongoing harassment
 22 issues in 2008, 2009?
 23 A. When you say "ongoing," that were under
 24 investigation? Is that what you mean?
 25 Q. With respect to you.

DEPOSITION OF SUZETTE BOLLINGER - 03/04/2010

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1 A. Yes, I did.
 2 Q. Was this part of the training that you
 3 provided to employees of Fall River?
 4 A. Yes. The outside employees only.
 5 Q. And when would you have given this
 6 training?
 7 A. It was not long after I started.
 8 So, it was sometime in 2008, maybe in
 9 April or May.
 10 Q. And then one question with respect to
 11 an allegation that you have made in this case.
 12 You make a reference to the Seniority
 13 Policy, which we've discussed.
 14 You make reference to a "For Cause
 15 Agreement," an understanding that you would not
 16 be terminated except for cause.
 17 A. That was the impression I was given
 18 when I was hired, that if I did my job well, I
 19 could be a long-term employee there. I could
 20 retire from there and be part of that employee
 21 family for a great number of years.
 22 Q. Do you remember specifically who gave
 23 you that impression?
 24 A. My Supervisor, when I was very first
 25 hired, which was Valene Jones; and also the

1 copies of those.
 2 I believe that there was a policy in
 3 effect at that time, which was clear back in
 4 1988, that said we would not be fired except for
 5 "cause."
 6 Q. Have you seen that policy in your
 7 review of any of the materials?
 8 A. No.
 9 MR. BARRETT: I think we're done. No
 10 further questions from me.
 11 MR. OHMAN: I have no questions at this
 12 time.
 13 We would like the opportunity to review
 14 and sign.
 15 And we would like an E-tran and
 16 condensed.
 17 (The deposition concluded at 3:24 P.M.)
 18 -ooOoo-
 19
 20
 21
 22
 23
 24
 25

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1 Manager at the time whose name was George Mangum.
 2 Q. When you use words like "I was given
 3 the impression" as opposed to "I was told," that
 4 requires follow-up from me and you can understand
 5 why.
 6 I mean, you can have an impression and
 7 it can be subjective. You may never have been
 8 told something. It's just something that you
 9 felt based on just a feeling.
 10 Is that what we're talking about?
 11 A. No, I was told that at the beginning.
 12 I remember -- not clearly, but I remember having
 13 that discussion with Valene Jones and Mr. Mangum.
 14 And then throughout the years, because
 15 no one left Fall River, the rate of people to
 16 leave was next to nothing. I mean, people rarely
 17 left.
 18 And, so, afterwards I guess I gained
 19 the impression that I would be there for a long
 20 time because people retire from there.
 21 Q. Were you ever provided anything in
 22 writing that stated that your employment would
 23 continue except for "cause"?
 24 A. They gave me a lot of policies when I
 25 was very first hired and I still do not have

VERIFICATION

STATE OF _____)
 COUNTY OF _____) ss.

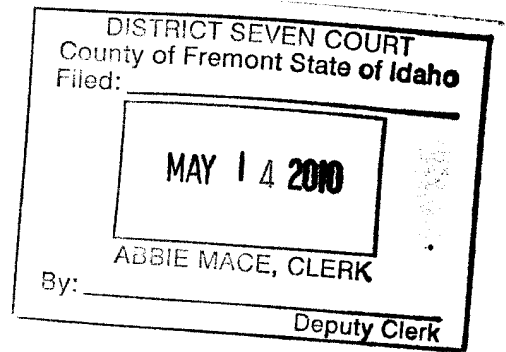
I, SUZETTE BOLLINGER, say that I am the witness referred to in the foregoing deposition, taken the 4th day of March 2010, consisting of pages numbered 1 to 213; that I have read the said deposition and know the contents thereof; that the same are true to my knowledge, or with corrections, if any, as noted.

Page	Line	Should Read	Reason
------	------	-------------	--------

SUZETTE BOLLINGER

Subscribed and sworn to before me this _____ day of _____ 2010, at _____, Idaho.

(Seal) Notary Public for Idaho
 My Commission Expires _____



JOHN M. OHMAN, ESQ.
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ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
Corporation,

Defendant.

Case No. CV-10-36

**PLAINTIFF'S REPLY MEMORANDUM
IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff by and through her attorney of record and objects to the Defendant's Motion for Summary Judgment.

Defendant's Motion for Summary Judgment is based on its assertion that "... **plaintiff fails to state claims for which relief can be granted under Idaho Law...**". I.R.C.P. 56 (c) states that a Motion for Summary Judgment can only be granted if there are no genuine issues as

**PLAINTIFF'S REPLY MEMORANDUM IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT - 1**

S:\MICK\Clients\Bollinger.Suzette\Memorandum in Opposition to MSJ.wpd

ORIGINAL

to material facts.

ISSUES

1. DOES PLAINTIFF'S COMPLAINT STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED UNDER IDAHO LAW?
2. DID SUZETTE BOLLINGER'S TERMINATION BY DEFENDANTS BREACH AN EXPRESS OR IMPLIED CONTRACT?
3. DID SUZETTE BOLLINGER'S TERMINATION BREACH FRREC'S COVENANT OF GOOD FAITH AND FAIR DEALING?
4. DOES SUZETTE BOLLINGER HAVE A CLAIM FOR WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY?
5. IS SUZETTE BOLLINGER'S CLAIM FOR NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS PREEMPTED BY THE EXCLUSIVITY OF IDAHO'S WORKERS' COMPENSATION LAW?
6. WAS DEFENDANT'S CONDUCT, IN ITS TERMINATION OF SUZETTE BOLLINGER, SUCH THAT IT CAUSED AN INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS?

STANDARD OF REVIEW

A motion for summary judgment "may be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." IRCP 56 (c).

It has long been held by the courts that on a motion for summary judgment, the "court should liberally construe all facts in favor of the nonmoving party and draw all reasonable inferences from the facts in favor of the nonmoving party". *Hayward v. Jack's Pharmacy Incorporated*, 141 Idaho 622, 115 P. 3d 713; *Hill v. Hill*, 140 Idaho 812. 102 P. 3d 1131 (Idaho,

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2004); *Nez Perce Tribe v. Little Hope Investments, L.L.C.*, 140 Idaho 219, 91 P. 3d 1123 (Idaho, 2004). “In ruling for motion for summary judgment, all doubts are to be resolved against the moving party, and motion must be denied if evidence is such that conflicting inference may be drawn therefrom, and reasonable persons might reach differing conclusions.” IRCP 56 (c). See *Olsen v. JA Freeman Company.*, 117 Idaho 706, 791 P.2d 1285 (1990). It is also a fundamental rule of law that a summary judgment may not be granted where a genuine issue of material fact exists. *Davis v. McDougall*, 94 Idaho 61, 63, 480 P. 2d 907, 909 (1971)

On motion for summary judgment, the burden of proving the absence of an issue of material fact rests at all times upon the moving party. *Blickenstaff v. Clegg*, 140 Idaho 572, 97 P. 3d 493 (Idaho, 2004). In *Roark v. Bentley*, 139 Idaho 793, 86 P. 3d 507 (Idaho, 2004).

This burden has two components: an initial burden of production, which shifts to the nonmoving party if satisfied by the moving party; and an ultimate burden of persuasion, which always remains on the moving party. If the non-moving party establishes sufficient existence of an element essential to that party’s case and can provide evidence in a form that would or would not be admissible at trial, but which establishes an issue of material fact then summary judgment should not be granted. *Celotex Corporation v. Catrett*, 477 U. S. 317, 106 S. Ct. 2548 (1986) ; *Dunnick v. Elder*, 126 Idaho 308, 882 P. 2d 475 (1994)

A Motion for Summary Judgment should only be granted if “it is clear that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *O’Guin v. Bingham County*, 142 Idaho 49, 122 P. 3d 308 (Idaho, 2003).

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UNDISPUTED FACTS

- A. In October 1988, plaintiff Suzette Bollinger ["Suzette"] was hired by Fall River Electric Cooperative, Inc. ["FRREC"] as a "cashier/receptionist."
- B. In October 1988, FRREC had written Personnel Policies.
- C. In 1993, Suzette was promoted to the position of "Energy Auditor," and in 2004, "Member Services Representative" was added to her responsibilities. Her initial supervisor was Steve Knapp, and when he retired, Mickie Funke was hired to take his place.
- D. In February 2008, Suzette was promoted to "Safety & Loss/Facility Director." Her supervisor was Larry Hamilton.
- E. In 2008, Dee Reynolds was the GENERAL MANAGER. He retired in January 2009, and Bryan Case replaced him.
- F. FRREC's personnel policies from 1977 to March 2009, did not include an "Employment-at-Will" policy.
- G. Suzette's employment was terminated on July 28, 2009.

ARGUMENT AND AUTHORITY

1. PLAINTIFF'S COMPLAINT DOES STATE CLAIMS FOR WHICH RELIEF CAN BE GRANTED UNDER IDAHO LAW.

On January 15, 2010, plaintiff filed a Complaint ¹ setting forth the facts on which she relies

¹An AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY, dated February 2, 2010, was filed eliminating BRYAN CASE, LARRY HAMILTON and DOES 1-5 as defendants, as FRREC agreed that said individually named defendants were "*operating within the course and scope of their employment*".

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on in alleging that Defendant breached an “EXPRESS AND IMPLIED CONTRACT” with her, and that her termination was “RETALIATORY” and “WRONGFUL.”

Idaho Rules of Civil Procedure control Pleadings and Claims for Relief, as follows:

Rule 8. General rules of pleading

(a)(1) *General Rules of Pleading – Claims for Relief.* A pleading which sets forth a claim for relief . . . shall contain . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. . .

...
(f) **Construction of pleadings.** All pleadings shall be construed as to do substantial justice.

In Villa Highlands, LLC v. Western Community Insurance Co., 226 P. 3d 540, 543 (2010),

the Idaho Supreme Court states:

... “A complaint need only contain a concise statement of the facts constituting the cause of action and a demand for relief.” [citations omitted] This Court has stated that such pleadings should be construed liberally so as to “secure a ‘just, speedy and inexpensive’ resolution of the case.” [citations omitted] The focus is on insuring “that a just result is accomplished, rather than requiring strict adherence to rigid forms of pleadings.” [citations omitted] Thus, the “key issue in determining the validity of a complaint is whether the adverse party is put on notice of the claims brought against it.” [citations omitted]

Defendant is incorrect in its assertion that Suzette’s Complaint “fails to state claims for which relief can be granted under Idaho Law. Suzette’s Complaint meets the requirements of IRCP and case law.

2. SUZETTE BOLLINGER’S TERMINATION WAS A BREACH OF FRREC’S EXPRESS AND/OR IMPLIED CONTRACT WITH HER.

Defendant self-serving conclusions that “Bollinger’s Termination did not Breach an Express

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or Implied Contract of Employment or Covenant of Good Faith and Fair Dealing”. Suzette begs to differ, upon the facts of the case, and applicable law!

Between 1988, when Suzette was hired, and July 28, 2009, when Suzette’s employment was terminated [admittedly without cause], the following FALL RIVER ELECTRIC COOPERATIVE INC. GENERAL POLICIES [600.00 PERSONNEL POLICIES]were in effect. [*Emphasis added*]. An index setting forth the policy, the date adopted, and the date revised, is provided herewith as [EXHIBIT 1]. Here follows a chronology showing no “At Will” until March 2009, twenty years after Suzette’s employment and only after Bryan Case becomes General Manager.

A. POLICY HISTORY:

General Policy No. 601.0: PERSONNEL POLICIES: adopted **MARCH 14, 1977**
[EXHIBIT 2A]

I. PURPOSE:

The Cooperative recognizes the need for a staff of efficient, loyal, and well-trained employees who are vitally interested in the operation of the Cooperative. The employees need to know that loyalty, cooperation, and growth in skills and effectiveness on the job will be recognized and rewarded. Therefore, it is advisable to define the employer-employee relationship through a series of personnel policies so that there may be mutual understanding of the special employment conditions under which the Cooperative employees function in their jobs.

II. POLICY:

It shall be the policy of the Board of Directors . . . to adopt such policies as will assure the Cooperative personnel that loyalty, cooperation, and growth in skills and effectiveness on the job are a mutual benefit to the Cooperative and the employees . . .

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There is no provision regarding "At-Will-Employment."

General Policy No. 601.0: PERSONNEL POLICIES: adopted **OCTOBER 27, 2003:**
[EXHIBIT 2B]

I. PURPOSE:

...

The cooperative recognizes that motivated, efficient, well-trained, and dedicated employees are essential to the effective operation of the enterprise. further, Cooperative employees need to understand their willingness and ability to contribute to the effectiveness of the operation is essential to their individual progress and success in the organization.

...

II. POLICY:

It shall be the policy of the Board of Directors . . . to adopt such personnel policies as will assure the Cooperative's ability to attract and retain a quality workforce of skilled and motivated employees who are committed to the ongoing success and vitality of the Cooperative.

More specifically, policies will be adopted with the intent to encourage dedicated and loyal service to the Cooperative and its customers and to reward employees fairly and consistently according to generally accepted job-related standards. Factors that are important to the effective operation of Cooperative include: dedicated and loyal service, job knowledge and skills, job effectiveness, continual learning and improvement, and team work on the part of all employees.

Further, under these policies, it is essential that all relationships and actions within the Cooperative be guided by principles of honest, integrity, legal compliance, and mutual respect among all employees and manages.

. . . It must be understood that all personnel polices are subject to change at the discretion of the Cooperative as conditions warrant. Cooperative management will endeavor to inform employees of any changes in policy as soon as practicable. However, circumstances may require some policy changes without prior notice.

It is also important for all managers and employees to understand that employment with the Cooperative is entirely voluntary. The

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Cooperative's personnel policies are not intended and cannot be implied to create an employment contract or to guarantee permanent employment or employment for any fixed or set time period.

The employee or the Cooperative may terminate the employment relationship at any time for any lawful reason . . .

Still, there is no provision for "At-Will-Employment."

General Policy No. 601.0: EMPLOYMENT-AT-WILL: adopted **MARCH 20, 2009:**
[EXHIBIT 2B]

I. POLICY:

It shall be the policy of the Board of Directors . . . to adopt such personnel policies as will assure the Cooperative's ability to attract and retain a quality workforce of skilled and motivated employees who are committed to the ongoing success and vitality of the Cooperative.

More specifically, policies will adopted with the intent to encourage dedicated and loyal service to the Cooperative and its customers and to reward employees fairly and consistently according to generally accepted job-related standards. Factors that are important to the effective operation of the Cooperative include: dedicated and loyal service, job knowledge and skills, job effectiveness, continual learning and improvement, and teamwork on the part of all employees.

...

II. PURPOSE:

All employees who do not have a separate, individual written employment contract for a specific fixed term of employment are employed at the will of the company and may be terminated by the company at any time, for any reason, with or without notice, except as prohibited by law or the express provisions of any applicable labor agreement. . .

III. PROVISIONS:

A. Employees who do not have a separate . . . employment contract . . . are employed at the will of the Cooperative, and are subject to termination at any time . . .

...

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- C. This policy will not be modified by any statements contained in this or any other employee handbooks, . . . None of these documents, whether singly or combined, will create an express or implied contract concerning any terms or conditions of employment.
- ...

Note that "at-will" is adopted 21 years following the initial hiring of Suzette; within four months of her termination and only after Bryan Case becomes General Manager with the intent of firing her.

B. EMPLOYEE RELATIONS:

Historical perspective: As indicated by the following policy excerpts, FRREC was always committed to promote [not destroy] employee relations; to consider seniority when making decisions regarding promotions and terminations, and follow federal and state laws, rules and regulations.

602.0 MANAGEMENT-EMPLOYEE RELATIONS [adopted March 1977, revised September 15, 2003] [EXHIBIT 3]

I. PURPOSE:

Recognizing the importance of sound operational management of the cooperative to achieve the purpose for which it was organized, the Board of Directors has delegated the responsibility of management to the General Manager. . .

The General Manager pledges to operate the Cooperative in a fair manner, which will respect the rights of all employees and serve the best interests of the Cooperative. . .

II. POLICY:

It shall be the policy of the Board of Directors . . . to expect that management-employee relations shall be maintained in conformity with the provisions established by this policy and applicable laws and regulations.

...

IV. PROVISIONS:

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To create a basis for the daily operations of the Cooperative, the General Manager and all employees shall be guided by the following principles:

- A. Management reserves the right to:
 - ...
- B. Management pledges to:
 - 1. Respect the rights and dignity of all employees.
 - 2. maintain a work environment that fosters teamwork and mutual respect.
 - 3. Operate the cooperative in a manner that is fair to each employee and consistent with the business needs of the Cooperative.
 - ...
 - 5. Make the cooperative a safe place to work.
 - 6. Give full consideration to all corrective suggestions that might increase the efficiency of operations and improve working conditions.
 - 7. Listen and be responsive to employee problems and concerns.
- C. Management expects each Cooperative employee to:
 - 1. Respect the position, dignity, and rights of all other employees.
 - 2. Perform his (her) work in an efficient manner and in the best interest of the Cooperative.
 - 3. Continue learning improving job skills.
 - 4. Protect and preserve the property of the Cooperative to the best of his (her) ability.
 - ...

C. SENIORITY:

604.0 SELECTION OR PROMOTION OF PERSONNEL [adopted January 1977, revised May 1989] [EXHIBIT 4]

I. PURPOSE:

In order to operate most efficiently, the Cooperative must employ the best qualified individuals available to fill vacant positions. The purpose of this policy is to assure applicants for positions that they will be treated fairly in accordance with

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accepted personnel practices and applicable state and federal laws.

II. POLICY:

It shall be the policy of Fall River Rural Electric Cooperative, Inc. to employ the best qualified individuals available for all vacancies in accordance with accepted personnel practices and applicable state and federal laws.

III. RESPONSIBILITY:

The General Manager and each Department Head and the Board of Directors.

IV. PROVISIONS:

The following procedures and conditions shall apply to the provisions of this policy:

...

B. All vacancies shall be filled by the best qualified applicant. Whenever there are employees within the Cooperative who are able to qualify, they will be given first consideration if all other qualifications are equal. Only if two or more employees have equal qualifications, **will length of service be given consideration.** Management reserves the right to make the final determination based on the needs of the Cooperative.

...

D. **EMPLOYEE SAFETY:**

614.1 WORK STANDARDS AND PERSONAL CONDUCT
[adopted March 1983, revised October 14, 2004] [EXHIBIT
5]

I. PURPOSE:

Standards of business and personal conduct are important to the success of the Cooperative and each employee. Enforcement of these standards will not only contribute to the continued economic viability of the Cooperative but also will help make the Cooperative **a better and safer place to work.**

II. POLICY:

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- A. All employees are expected to abide by applicable federal and state laws and regulations in the performance of their job duties, as well as other commonly accepted standards of business and personal conduct. . .

E. FOR CAUSE:

615.0 TERMINATION OF EMPLOYMENT [adopted March 1977] [EXHIBIT 6]

I. PURPOSE:

Although it is desirable for the continuity of operations of the Cooperative to have as few changes of personnel as possible, it must be recognized that such changes will occur. The purpose of this policy is to detail the special circumstances pertaining to the termination of employment with the Cooperative of its employees.

...

IV. PROVISIONS:

The following provisions and procedures shall apply to this policy:

...

B. Lay-Off of Employees

If, because of lack of work, it is necessary to lay-off a regular employee, he (she) will be given:

- 1. Two weeks notice or the cash equivalent.

...

- 3. Priority in consideration for any subsequent vacancy for which he (she) is qualified.

- 4. Credit for prior service toward seniority and other length of service benefits upon subsequent re-employment.

...

D. Discharge of Employees

...

2. Regular Employees

A regular employee may be discharged only for cause and shall receive:

- a. Two weeks' notice or the cash

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equivalent.

F. SENIORITY:

616.0 EMPLOYEE SENIORITY [adopted June 1983, revised April 26, 2006] [EXHIBIT 7]

I. PURPOSE:

It is recognized that length of service to the Cooperative is an asset, and that the employees of the Cooperative need to be recognized for length of service.

II. POLICY:

When in the **fair and impartial judgement of the management** of the Cooperative, skill, merit, ability, fitness and efficiency are substantially equal, **seniority** with the Cooperative **shall govern in making** promotions, demotions, transfers, **lay-offs** and recalls.

III. RESPONSIBILITY:

The General Manager and Department Heads.

IV. EMPLOYEE DEFINITIONS:

A. Regular employees:

All Company benefit programs are available to employees working in a continuous (e.g.: 40 hour work week) employment classification.

V. PROVISIONS:

The following provisions and conditions shall apply to this policy.

A. Seniority shall be deemed to accrue from the date of hire . . . No seniority will be accrued during layoff periods.

...

C. Seniority shall terminate for any of the following reasons:

...

4. Continuous layoff for a period in excess of two years duration.

...

D. Vacations shall be scheduled according to seniority

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during the more desirable vacation periods as the requirements of service permits.

...
SENIORITY LIST – April 26, 2004

[Note: Suzette is identified as no. 26 on the April 26, 2004 list. At her March 4, 2010. deposition², she was handed this list, which was identified as Exhibit 24, and stated that her seniority no. was 18, due to the numerous employees who were no longer on the list.] [Bollinger's deposition, 188: 9-14; 190: 6-13]

G. BRYAN CASE RECOMMENDED THIS POLICY:

625.0 ANTI-HARASSMENT [adopted May 30, 2009] [EXHIBIT 8]

I. PURPOSE:

A. To clearly state the policy of the Cooperative regarding harassment on the basis or race, color, religion, sex, national origin, age or disability.

...
II. POLICY CONTENT:

The Cooperative prohibits harassment on the basis of race, color, religion, sex, national origin, age or disability or other legally protected classifications, and will provide all Cooperative employees and applicants with protection against harassment in the workplace. All employees must avoid offensive or inappropriate behavior at work.

III. PROVISIONS:

- A. "Harassment" is verbal or physical conduct that denigrated or shows hostility or aversion toward an individual because of his/her race, color, religion, sex, national origin, age or disability or that of his/her relatives, friend or associates and that:
1. Has the purpose or effect of creating an intimidating, hostile or offensive working environment:
 2. Has the purpose or effect or unreasonably interfering with an individual's work

² Those portions of Suzette's deposition cited are provided herewith as EXHIBIT 9

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- performance; or
3. Otherwise adversely affects an individual's employment opportunities.

...
D. . . . The following reporting procedures are suggestions only. In the event that an allegation of harassment is made against the employee's supervisor, the employee should report the matter directly to the General Manager. . . If an allegation of harassment is made against the General Manager, a report should be made immediately to the President of the Board and/or the Cooperative's attorney. . .

...
IV. RESPONSIBILITY:

- A. The Board, General Manager, department managers, and supervisory personnel are responsible for the administration of this policy.

ANALYSIS

Suzette was hired in 1988 under Policies approved of and adopted in 1977, with some modest revisions. She performed in an exemplary fashion, with strict adherence to the policies, without criticism or problems. Not until March 30, 2009, after the employment of Bryan Case as General Manager ³, was a change of policy to "at-will" adopted so that he could rid himself of Suzette. FRREC's actions should be bound by equitable duties of waiver, laches, and estoppel and its breach of contract.

In Idaho, there are limitation on the termination of an "at-will-employee." A part of this limitation can be the "personnel policies" and historical practice of the employer.

In Metcalf v. Intermountain Gas Company, 116 Idaho 622, 624, 778 P. 2d 744, 747, (1989)

³ For 20 years and 7 months, [October 20, 1988 to March 30, 2009] the 1977 policy governed Suzette's employment. It was only four [4] months prior to termination of Suzette's employment, [March 30, 2009 to July 28, 2009] that a new policy was written.

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the Court discusses provisions in an employee handbook and the limitations placed on an employer in the termination of an employee. Armida Metcalf performed clerical duties in the Hailey, Idaho office of Intermountain Gas. During her employment she accrued sick leave in excess of eight weeks. At a point in time, Metcalf was required to use her accrued sick leave, and was absent for eight weeks. During her absence, Intermountain hired a part-time employee, but then changed that part-time employee to a full-time employee and changed Metcalf's status to that of a part-time employee. Metcalf sued for "breach of employment contract and breach of implied covenant of good faith and fair dealing. The District Court entered summary judgment for Intermountain and Metcalf appealed. The Supreme Court held that:

(1) material issue of fact existed as to whether employer agreed that employment relationship would not be terminated or employee penalized for using sick leave benefits which employee had accrued, and (2) covenant of good faith and fair dealing is implied in employment contracts.

The Court explains its reasoning as to the existence of a "material issue of fact":

As a result of numerous decision of this Court in recent years, it is now settled law in this state that:

Unless an employee is hired pursuant to a contract . . .the employment is at the will of either party . . .

. . . However, such a limitation on the right of the employer (or the employee) to terminate the employment relationship "can be express or implied." [citations omitted] A limitation may be implied if, from all the circumstances surrounding the employment relationship, a reasonable person could conclude that both parties intended that the employer's (or the employee's) right to terminate the employment relationship-at-will had been limited by the implied-in-fact agreement of the parties. *See, e.g., Spero v. Lockwood*, 111 Idaho 74, 721 P. 2d 174 (1986); *Wagensell v. Scottsdale Mem. Hospital*, 147 Ariz. 370, 710 P. 2d 1025, 1036 (Ariz. 1985) (*en banc*) ("An implied-in-fact

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contract term . . . is one that is inferred from the statements or conduct of the parties.”); 1 A. Corbin, §17, at 38 (1960).

This Court has recognized that “[a]n employee’s handbook can constitute an element of the contract” [citations omitted] Unless an employee handbook specifically negates any intention on the part of the employer to have it become a part of the employment contract, a court may conclude from a review of the employee handbook that a question of fact is created regarding whether the handbook was intended by the parties to impliedly express a term of employment agreement. [citations omitted]

The Court concluded that an employee handbook [policy] can “modify the employer’s right to terminate the employment relationship at will . . . after considering all circumstances of this case:

that a material issue of fact exists regarding whether, by providing for accumulated sick leave benefits, the employer impliedly agreed with the employee that the employment relationship would not be terminated . . . for use of sick leave benefits. . . “the trier of fact must determine whether ‘a contract existed between the parties by virtue of the . . . policy manual.’ ”

At her deposition, Suzette was asked about the statements in her Complaint regarding FRREC’s “seniority policy,” and termination “for cause agreement.” She states:

That was the impression I was given when I was hired, that if I did my job well, I could be a long-term employee there. I could retire from there and be part of that employee family for a great number of years. [Bollinger’s deposition, 209: 16-21]

[*She*] was told that at the beginning. I remember – not clearly, but I remember having that discussion with Valene Jones and Mr. Mangum.

And then throughout the years, because no one left Fall River, the rate of people to leave was next to nothing. I mean, people rarely left.

And so, afterwards I guess I gained the impression that I would be there for a long time because people retired from there. [Bollinger’s deposition, 210: 11-20]

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When asked if she had anything in writing that indicated she could only be terminated for cause, she states:

They gave me a lot of policies when I was very first hired and I still do not have copies of those.

I believe that there was a policy in effect at the time, which was clear back in 1988, that said we would not be fired except for "cause."
[Bollinger's deposition, 210: 24-25; 211: 1-5]

Suzette was asked if in 2009, there was "some anxiety . . . with respect to whether anybody would be losing their job?", to which Suzette answered, as follows:

There had been a memo put out at about this time offering early retirement to individuals.

And I remember have a conversation with one other employee that: If this is the way that they're going to cut costs, the people don't accept it. What will they do next? Will they lay people off? And we both agreed that they might.

But I didn't feel there was any reason for me to be afraid for my job because of the Standing Seniority Policy and having been there for 21 years, longer than most of the other employees.
[Bollinger's deposition, 186: 8-24]

An employee does have the right to rely on documents generated by his/her employer regarding terms of employment, as the Court set out in Holmes v. Union Oil Company of California, 114 Idaho 773, 760 P. 2d 1189 (1988). During his employment, Holmes had a drinking problem, and in the summer of 1984, he was arrested for "driving while under the influence of alcohol. This was his second arrest during a five year period, which subjected him to severe criminal penalties. His employer made the decision to allow Holmes to enter into a residential alcohol treatment program, for which the employer paid the costs. The day before he completed the program Holmes met with a representative of his employer, who produced a letter stating that Holmes would be

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placed on probation and that Holmes must continue in a rehabilitation program. If Holmes failed to follow the requirements set forth in the letter, his employment would be terminated. Approximately seven months after Holmes and the employer made the probation agreement, Holmes was stopped and cited for violating the terms of his driving privileges. His employer terminated his employment. Holmes sued his employer for "breach of employment contract and intentional infliction of emotional distress." The District Court entered summary judgment for the employer, and Holmes appealed. The Supreme Court reversed the summary judgment on Holmes status as at-will at the time of discharge. The Court reasoned that:

The letter made it clear that violation of its terms could be cause for discharge and likely also would be a violation of probation. The converse - that violation of a condition of probation would also be a violation of the letter and, therefore, cause for discharge-was not made quite so clear. . . Rather, the issue here simply is whether the letter altered Holmes' at-will status by limiting the possible reasons for discharge or by providing a certain duration of employment.

FRREC's policies include conflicting standards regarding the status of its employees. The General Policies of "The Board of Directors and General Manager" stress the fact that FRREC recognizes the need for a staff that is "loyal" and "dedicated" and that the ability to retain its employees are a cost benefit.

- a. 604.0 SELECTION OR PROMOTION OF PERSONNEL states that FRREC would prefer to promote its employees instead of hire from outside. A part of the selection process includes "seniority." [Exhibit 4]
- b. 615.0 TERMINATION OF EMPLOYMENT states that "it is desirable" to "have as few changes in personnel as possible," but that "changes will occur." The policy sets forth "PROVISIONS" for "Resignations"; "Lay-Off"; and "Discharge." [Exhibit 6]
- c. 616.0 EMPLOYEE SENIORITY clearly states that:

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PURPOSE:

“length of service . . . is an asset”; and
“employees . . . need to be recognized for length of service”.

POLICY:

“When in the fair and impartial judgment of the management . . . skill, merit, ability, fitness and efficiency are substantially equal, seniority with the Cooperative shall govern when making . . . **lay-offs**. . .” [Exhibit 7]

During her 21 years of service, Suzette had the knowledge, skills, merit, and training to be placed into another position for which she was qualified. [e.g. Member Services Representative, or Energy Auditor, or cashier/receptionist] Instead, she was laid-off, and persons with less seniority remained in those positions that she had prior to her promotion in 2008. Defendant admits in its Memorandum, p.6, that [¶5] “**At all times, Bollinger performed her duties in a satisfactory manner.** (Case Aff. ¶6.)”

The defendant has cited several cases from other jurisdictions. One in particular is on point in this matter and concerns lay-off procedures and personnel policies: Troth v. Square D Company, 712 F. Supp. 1231 (D. S. C. 1989). In that case, the plaintiffs “assert that under their employment handbook the defendant was required to lay-off employees in reverse order of seniority and that the failure to do so constituted a breach of their employment agreements. . . The decision states:

at 1234 - 1236

Since the defendants filed these motions, the South Carolina Supreme Court, upon certification from this Court, resolved the issue of retrospective application in *Toth v. Square D*, 298 S.C. 6. 377 S. E. 2d 584 (1989). The Supreme court stated in *Toth*: “[W]e explicitly hold that *Small* is to be retroactively applied to causes of action arising prior to the date it was filed. . . [citation omitted] In light of this holding, the Court rejects the defendant’s first ground for summary judgment on the contract causes of action.

As a second ground, the defendant argues it is entitled to summary judgment on the breach of contract causes of action asserted by those

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plaintiffs discharged after July 1986, when the defendant issued a revised handbook. . . The revised handbook on which the defendant relies contains no lay-off provisions and, in additions, sets out . . ." a disclaimer.

. . .
The South Carolina Supreme Court based its decision in *Small* on principles of equity and fairness:

Once [the defendant employer] voluntarily chose to publish the handbook and bulletin and orally assure the employees that the provisions of those publications would be followed, there were "strong equitable and social policy reasons militating against allowing the employer to promulgate for their employees potentially misleading personnel manuals while reserving the right to deviate from them at their own caprice." [citation omitted] "having announced the policy, presumably with a view to obtain the benefit of improved quality of the work force, the employer may not treat its promise as illusory." [citation omitted] . . . It is patently unjust to allow an employer to couch a handbook, bulletin, or other similar material in mandatory terms and then allow him to ignore these very policies as "a gratuitous nonbinding statement of general policy" whenever it works to his disadvantage. . . . If company policies are not worth the paper on which they are printed, then it would be better not to mislead employees by distributing them. Due to the potential of gross inequality in a situation such as the one in the case at bar, a majority of states has determined that a handbook can alter the employment status. [citation omitted] South Carolina, as a progressive state which wishes to see that both employer and employee are treated fairly, no joins those states.

. . . If an employer were permitted to extinguish an employee's rights under an existing handbook through the simple expedient of a revised handbook, employees could suffer the very inequities the *Small* court sought to prevent. An employer could ignore his own mandatory policies and his handbook, as the *Small* Court observed, would not be worth the paper on which it is printed.

Permitting unilateral modification of an employment contract through handbook modification of an employment contract through handbook revision would also run contrary to established principles of contract formation. the essential elements of any contract are mutual assent to be bound, usually demonstrated by offer and acceptance, and

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exchange of valuable consideration. [citations omitted] Although an employment contract such as the one alleged here is, as the *Small* court observed, a unilateral agreement, it nonetheless requires mutual assent and consideration [citation omitted] In a unilateral employment agreement, the employer makes an offer or promises to hire in return for specified benefits and wages and the employee accepts the offer by performing the act on which the promise is impliedly or expressly based; the employee's act or forbearance in reliance on the employer's promise furnishes consideration to the employer, while the benefits conferred under the terms of the promise constitute consideration for the employee. [citation omitted]. Once the contract has been created, the employer is legally bound by the terms of its promise which are enforceable by the employee.

Viewed most favorably to the plaintiffs, the facts establish that the defendant was contractually bound under the first handbook to lay off employees according to the handbook's provisions and the plaintiffs enjoyed a contractual right not to be laid off except in accordance with those provisions. Thus, the defendant is entitled to summary judgment here only if it can demonstrate that the parties' contractual rights and duties were altered by a modification which satisfies all the requirements of a valid contract. [citation omitted] The defendant must therefore show that the plaintiffs assent to modify the alleged contract to reflect the terms of the revised handbook and that they received sufficient consideration to support that modification. The court concludes the defendant has failed to meet its burden on summary judgment of showing an absence of any genuine issue of fact concerning either of these elements.

While the defendant has established the existence of a new offer, embodying the terms of the revised handbook, it has not established as a matter of law that the plaintiffs accepted the terms of the revised handbook by continuing to work for the defendants after receiving, and in some cases actually reading, that handbook is a quest of fact for the jury to decide. . . Further, the defendant has not designated to the Court any new consideration the plaintiffs received in return for the modification. Consequently, the Court declines to grant summary judgment on the contract cause of action asserted by the ten plaintiffs laid off in January 1987, on the basis of the revised handbook.

For similar reasons, the Court likewise finds partial summary judgment is inappropriate on the contract cause of action asserted by

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the four plaintiffs laid off in January 1986. Under the Court's reasoning above and viewing the facts in their favor, the Court concludes these plaintiffs had a contractual right in January 19856 to be laid off only in compliance with the first handbook's provisions. If, as the Court has already held, mere revision of the handbook could not terminate that right, it likewise could not limit the damages recoverable on account of a breach of that right.

For these reasons, the Court denies the defendant's motions for summary judgment insofar as they rely on the revised handbook.

In 1988, when Suzette was hired, FRREC had personnel policies which applied to "seniority" – "lay-offs" – "terminations" and other employee benefits, and had no "at-will" provision. When viewing the personnel policies as a whole, FFREC did breach its express and implied employment contract with Suzette!

In Jenkins v. Boise Cascade Corporation, 141 Idaho 233,240, 241,108 P. 3d 380, 387, 388 (2005), the Court discusses "Breach of Contract Claim":

The district court correctly determined that Larry was an at-will employee of Boise Cascade. Unless an employee is hired pursuant to a contract that specifies the duration of the employment **or limits the reasons for which an employee may be discharged, the employment is at the will of either party** and the employer may terminate the relationship at any time for any reason without incurring liability. *Sorensen v. Comm. Tek, Inc.*, 118 Idaho 664, 666, 799 P. 2d 70, 72 (1990); *see also Metcalf v. Intermountain Gas Co.*, 116 Idaho 622, 778 P. 2d 744 (1989). In fact, an employment contract is presumed to be at-will unless "the parties . . . agree to a contract term limiting the right of either to terminate the contract at will." [citation omitted] **A limitation on the right of the employer or employee to terminate the employment can be express or implied.** *Sorensen*, 118 Idaho at 666, 799 P. 2d at 72.

A limitation will be implied when, from all the circumstances surrounding the relationship, a reasonable person could conclude that both parties intended that either party's right to terminate the relationship can be rebutted when the parties intend that an

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employee handbook or manual will constitute an element of an employment contract. *Mitchell v. Zilog, Inc.*, 125 Idaho 709, 712, 874 P. 2d 520, 523 (1994). **Whether the presumption is rebutted is normally a question of fact, unless an employee handbook specifically negates any intention on the party of the employer to have it become a part of the employment contract.** *Id.*, citing *Metcalf*, 116 Idaho at 625, 778 P. 2d at 747.

Employees rely on their employer's policies, but most importantly on their employer's actions when it comes to job security. Suzette performed her job duties in an exemplary fashion, clearly well above "satisfactory". She was high on the "seniority list" and understood that that was valued by FRREC – or was valued prior to 2009, and the appearance of Mr. Case! Suzette's justifiable trust is analogous to that in the case of Burton v. Atomic Workers Federal Credit Union, 119 Idaho 17, 803 P. 2d 518 (1990). For over 19 years Ms. Burton had been an employee of the Credit Union. Prior to her discharge, she was the executive secretary to the Credit Union's manager. When a new manager was hired, Ms. Burton, on June 11, 1985, was demoted from executive secretary to receptionist, then on July 11, 1985, her employment was terminated. Ms. Burton sued, and a jury found the Credit Union had an express or implied employment contract, which limited reasons for which she could be terminated, and awarded her \$104,952.06. The express/implied contract concerned employment until retirement at age 65, unless she was terminated for cause. The Credit Union had an employment manual, which had "... no reference to the nature of employment, whether at-will or otherwise. The manual was drafted by a prior office manager and is basically unsophisticated. . ." The Supreme Court reversed the jury's decision and remanded for a new trial, due to jury instructions and hearsay. Justice Bistline in his dissenting opinion disagreed with the Court, and suggested that the Court "provide the reasoning which explains to Lila Burton how it is

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that she is stripped of the jury's verdict in her favor." This case is used as an example of how employees trust in their employers can be misplaced to their detriment. Suzette's case does resemble the facts presented by Lila Burton. Lila trusted that she could maintain her employment until she retired, just as Suzette did. Suzette believed that her seniority was an important asset to FRREC. In both cases, all it took was the hiring of a new General Manager to destroy the historical practices of an employer!

3. FRREC'S TERMINATION OF SUZETTE WAS IN BREACH OF FRREC'S COVENANT OF GOOD FAITH AND FAIR DEALING.

During Suzette's 20 years of employment, FRREC Board and Management treated its employees with respect and gratitude for their dedication to the cooperative. Seniority was honored and used in management's decisions concerning advancement and employee benefits.

From October 20, 1988, to 1993, Suzette worked as a cashier/receptionist. In 1993 she was promoted to Energy Analyst Member Services Rep., a position she held for 16 to 17 years. [Bollinger's deposition, 10: 10-15; 11: 8-15] During those years she also "helped with the Safety & Loss Program," working with Larry Hamilton on the ordering of "personal protective equipment" and "supplies for the safety cabinet." [Bollinger's deposition, 14: 20-25; 15: 1-5]

In February, 2008, Suzette applied for the position of Safety & Loss/Facilities Director. A 2007 survey conducted by the National Rural Electric Cooperative Association determined that safety duties be separated from those of an operations manager. [Bollinger's deposition, 17:1-14]

The first case in Idaho that adopted **the implied covenant of good faith and fair dealing in an employment-at-will** relationship, is Metcalf v. Intermountain Gas Company, 116 Idaho 625-628, 778 P. 2d 747-750, *Supra*. Prior to the Metcalf decision, "*The rule in Idaho, as in most states,*

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is that unless an employee is hired pursuant to a contract which specifies the duration of the employment. . . the employment is at will . . . and the employer may terminate the relationship at any time for any reason with out incurring liability. See Jackson v. Minidoka Irrigation Dist., 98 Idaho 330, 563 P. 2d 54 (1977) and the cases cited therein. The only general exception to the above rule is that an employer may be liable for wrongful discharge when the motivation for discharge contravenes public policy . . . The Metcalf Court stated:

We hold that the express written contract term authorizing the termination upon 90-days notice is not overridden by an implied covenant of good faith and fair dealing which would supplant the expressed language of the contract and permit termination only upon good cause.

115 Idaho at 300, 766 P. 2d at 770

Nevertheless, it is the opinion of this Court today that employer-employee relationship . . . we should adopt an implied-in-law covenant of good faith and fair dealing (the covenant) has hereinafter outlined. . .

First . . . The potential recovery results in contract damages, not tort damages . . . [citation omitted]

Second, we hold that covenant protects the parties' benefits in their employment contract or relationship, and that **any action which violates, nullifies or significantly impairs any benefit or right which either party has in the employment contract**, whether express or implied, is a violation of the covenant which we adopt today. . .

We agree with the foregoing standard and analysis of the Arizona Supreme court in *Wagenseller* [*Wagenseller v. Scottsdale Memorial Hospital*, 147 Ariz. 370, 710 p.2d 1025 (Ariz. 1985) (*en banc*), and adopted the implied-in-law covenant of good faith and fair dealing in employee contracts as set out above. Any action by either party which violates, nullifies or significantly impairs any benefit of the employment contract is a violation of the implied-in-law covenant . . .

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. . . Accordingly, without tying the violation of the covenant to the “amorphous concept of bad faith,” we conclude that any action by either party which violates, nullifies or significantly impairs any benefit of the employment contract is a violation of the implied-in-law covenant of good faith and fair dealing which we adopt today
...

THERE ARE EXCEPTION TO AT-WILL EMPLOYMENT DOCTRINE:

There are several exceptions to that At-Will Doctrine in a claim of wrongful discharge. In Jackson v. Minidoka, 98 Idaho 330, 563 P.2d 54 (1997, the court stated:

- a. *the employment-at-will rule was not an absolute bar to the claim of wrongful discharge, but established that “an employee may claim damages for wrongful discharge when the motivation for the firing contravenes public policy.”*
- b. *discharge in violation of public policy is whatever contravenes good morals of an established interest of society.*

Suzette, for 21 years, worked hard to advance in her career at FRREC, and understood that “seniority,” a benefit identified by FRREC as a consideration used for promotions, would provide job security. FRREC disregarded her years of service and knowledge, chosing to terminate her employment in violation of its own policies!

SUZETTE’S WRONGFUL DISCHARGE WAS IN VIOLATION OF PUBLIC POLICY REGARDING SAFETY!

4. SUZETTE’S CLAIM FOR INFLICTION OF EMOTIONAL DISTRESS HAS NOTHING TO DO WITH WORKERS’ COMPENSATION LAW.

Idaho’s Worker’s Compensation statutes, Title 72, Chapter 101 *et sec.* require “[e]very employer” to provided insurance on its employees to compensate said employee for “injuries” while on the job! Idaho Code §72-101(17)(a)(b) identifies “injury” as “. . . *personal injury caused by an*

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accident arising out of and in the course of any employment . . . an unexpected, undesigned, and unlooked for 'mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury . . ."

Suzette was not injured "on" her job at FRREC. Instead she was terminated, and immediately escorted to her office to retrieve her personal items and escorted out the door!

5. FRREC'S CONDUCT IN TERMINATING SUZETTE, CONSTITUTES INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

On July 28, 2009, Suzette was taken by Larry Hamilton, her supervisor, to Bryan Case's [the General Manager] office where Mickie Funke was waiting, and "informed that she no longer worked there." [Bollinger's deposition, 162:18-24] Suzette was informed that her "position had been eliminated and that [she] needed to gather [her] things and leave." [Bollinger's deposition, 163:2-3] She was offered a "severance package," and told that she was "eligible for COBRA insurance," but she was not told that her insurance had been cancelled that day. Mr. Case did inform her that they had "decided to let [her file a] claim for unemployment." [Bollinger's deposition, 163: 5-17]. Obviously, her discharge was not the result of any misconduct on her part.

Mickie Funke and Larry Hamilton escorted her to her office, and watched as she "tried to gather" her things. "[T]hey told me that [she] had to hurry because they had a meeting to go to and that [she] needed to get this done." "[T] started taking things off of my counter and off of my walls and putting them in boxes. They wouldn't let other employees come in to console me except that Joni pushed past Larry and came in and gave me a hug; and so did Rondo Winters. They gave me 30 minutes to clean out 21 years. 21 years. 30 minutes." [Bollinger's deposition, 164: 9-22]

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To prove an action for negligent infliction of emotional distress, Suzette must show the following four elements as set forth in Johnson v. McPhee, 147 Idaho 455, 466 (2009):

(1) a duty recognized by law requiring the defendant to conform to a certain standard of conduct;

(2) a breach of that duty;

(3) a causal connection between the conduct and the plaintiff's injury, and;

(4) actual loss or damage.

- (1) For over the 21 years of Suzette's employment, FRREC treated its employees with respect, and adhered strictly to its personnel policies. Suzette understood the importance of "seniority" at FRREC, as, for over 21 years, she observed that "seniority" played a significant part in promoting of FRREC's employees to higher level jobs.
- (2) FRREC breached its duty to Suzette when it disregarded its own procedures and policies. Seniority was used by FRREC, according to its policies, for "promotions, demotions, transfers, lay-offs, and recalls," so long as merit, skill, ability, fitness, and efficiency are equal. Mr. Case admits in his Affidavit [¶ 6] that "[a]t all times, **Bollinger performed her duties in a satisfactory manner.**"
- (3) FRREC's actions by General Manager, Bryan Case in summarily terminating Suzette's employment, with the excuse that her position had been terminated, and his failure to follow FRREC's longstanding procedures and policies caused Suzette emotional distress. That Case's actions were intentional, is apparent from the facts

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that he was only employed for four months when he fired Suzette, and he set up such termination by harassing her; trying to effect a policy change to justify his conduct; and termination without notice and opportunity to be heard. Case's actions contravene FRREC's longstanding procedures and policies regarding seniority and its termination procedures.

- (4) After 21 years of faithful and diligent service, Suzette was "fired," with no consideration given to her seniority, knowledge, merit, skill, ability, fitness, and efficiency as an FRREC employee. That disregard, and the fact that she was called into a meeting, fired, and escorted to her office, and from the building had an extreme emotional affect on Suzette. Suzette was required to obtain counseling and therapy to deal with FRREC's actions. Suzette is now required to take "Celexa" an anti-depressant to deal with the results of her wrongful termination. [Bollinger's deposition, 7: 25; 8:1]

Johnson at 464, *supra*, also discusses the elements of intentional infliction of emotional distress as follows:

- (1) Defendant's conduct was intentional or reckless;*
- (2) the conduct was extreme and outrageous;*
- (3) there is a causal connection between the wrongful conduct and the plaintiff's emotional distress, and;*
- (4) the emotional distress was severe.*

- (1) FRREC's actions were in violation of its seniority and termination policies, and were intentional and reckless!

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(2)After 21 years of service in which FRREC honored its seniority and terminations procedures, and assured Suzette of continuing employment, to abruptly, unexpectedly , and without cause or justification, terminate Suzette was extreme and outrageous!

(3) Suzette, who was number 19 on the seniority list, was summarily discharged from her employment. FRREC's actions were a shock and caused Suzette extreme emotional and physical distress. Suzette was required to seek medication and counseling to deal with the shock and embarrassment and deal with FRREC's outrageous actions.

(4) FRREC's actions caused Suzette severe emotional distress, for which she is now required to take medication and undergo counseling.

While the facts essentially speak for themselves [res ipsa loquitur] nevertheless defendant claims that Suzette cannot prove that her treatment on July 28, 2009 was unjustified; atrocious; indecent; reckless; and/or outrageous. Defendant identifies cases from other states, which cases are substantially different from the issues herein, as follows:

a. Richardson v. East River Electric Power Cooperative, Inc. 531 N.W. 2d 23 (SD 1995). South Dakota rules on summary judgment include that the "movant has burden of proof to clearly show that there is no genuine issue of material fact and that he is entitled to judgment in matter of law. . . [and] . . . Summary is extreme remedy and should be awarded only when truth is clear and reasonable doubts existing upon existence of genuine issue of material fact should be resolved against movant."(SDCL 12-6-56(c)

East River's board of directors had received an anonymous letter accusing management of various "unlawful and unethical practices. . ." Another employee informed the general manager "Nelson" that one of the letters was authored by Bobbi Richardson. When she denied that she was the author, Nelson gave Richardson the opportunity to resign, which she declined. Nelson

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terminated her employment. "Her supervisor then escorted her to her office where she cleaned out her desk and left that afternoon."

b. Wornick Co. v. Casas, 856 S. W. 2d 732 (Tex. 1993)

Diane Casa "was approached by her supervisor . . . in the hall . . . and asked to come to her office. Once in the office Casa was notified that she was being terminated, with the reason given that "Casas had been disloyal to the company, had exhibited a bad attitude by 'snapping at people,' and had failed to perform certain assigned tasks." Casas requested further information, but was told to "leave the property immediately."

c. Corum v. Farm Credit Services, 628 F. Supp. 707, D. Minn. 1986)

In 1968, James M. Corum, Esq. became in house legal counsel for FICB. In 1980, Corum served as senior vice president and general counsel for FICB. In 1982, a new president of FICB/BC concluded that Corum should not be a part of senior management and removed him for that position to one of general counsel and secretary. In 1984, due to several reorganizations, a new "general counsel" was appointed. The new general counsel decided to reorganize the legal department and eliminate Corum's position. On September 4, 1984, Corum was handed "a document informing him that his position had been abolished," and was informed that "he was being discharged because he did not support corporate policies. Corum was told "to clear out his desk and vacate the premises as soon as possible."

d. Toth v. Square D Company, *Supra*. The plaintiffs in this matter "were discharged with no notice and escorted from the plant in the presence of their peers when they had dedicated most of their adult lives to the company . . ." The Court found that the plaintiffs did not

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“demonstrate any extreme or outrageous behavior . . .”

e. Seneca Knitting Mills Corporation v. Wilkes, 120 A. D. 2d 955, 502 N. y. S. 2d 844 (1986): There is very little information regarding the Complaint and Counterclaim, but the Court did rule that the fact that defendant was escorted by business did not “rise to the level of outrageous conduct. . . for intentional infliction of emotional distress. . .”

The facts in this matter are drastically different from those cases cited by defendant. After 21 years of assured employment; after attaining a position of 19 on FRREC’s seniority list, and then being summarily discharged by a new General Manager intent on ridding himself of Suzette because she insisted on safety concerns being addressed, constitutes conduct which is intentional; reckless; extreme; and outrageous. FRREC is responsible for its intentional infliction of emotional distress upon Suzette!

CONCLUSION

THERE ARE GENUINE ISSUES OF MATERIAL FACTS WHICH PRECLUDE SUMMARY JUDGMENT:

1. There are genuine issues of material facts regarding the policies that deal with the Board’s desire to maintain a **loyal** and **trained** staff to perform those duties to provide service to its patrons [members of the cooperative]. The policies must be viewed in its entirety, not “piece-meal” as defendant asserts.
2. There are genuine issues of material facts regarding the implied or express contract that the Board policies provided to Suzette.
3. There are genuine issues of material facts as to terms of employment; “at will” and its excepting FRREC’s personnel policies; and the protection and the benefits that

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said policies provided, and to which Suzette was entitled.


4. There are genuine issues of material facts regarding FRREC's failure/refusal to honor its seniority policy.
5. There are genuine issues of material facts regarding the adoption of a self serving policy intended to allow General Manager Bryan Case to fire Suzette because of his personal dislike of her and his resentment of her insistence that defendant follow safety rules and regulations. [e.g. 601.0 Employment-at-will; and 625.0 Anti-Harassment]
6. There are genuine issues of material facts regarding the General Manager's negligent and intentional actions to terminate Suzette's employment, resulting in emotional distress, and substantial monetary loss to her.
7. There are genuine issues of material facts regarding the effect FRREC's failure to follow its own procedures and policies.
8. There are genuine issues of material facts regarding FRREC's wrongful termination in violation of public policy. Suzette's position as "Safety & Loss/Facility Director" required her to notify management of possible safety requirements and violations, for the well-being of FRREC's employees; its patrons; and the public.
9. There are genuine issues of material facts regarding FRREC's conduct which caused intentional emotional distress.

Suzette requests that this Court deny FRREC's Motion for Summary Judgment.

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DATED this 12 day of May, 2010.



JOHN M. OHMAN, ESQ.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 12 day of May, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

Fremont County
Court Clerk
151 W. 1st N, Rm 15
St. Anthony, ID 83445

By pre-paid post
 By hand delivery
 By facsimile transmission
624-4607

Honorable Gregory W. Moeller
Madison County
Court Clerk
P. O. Box 389
Rexburg, ID 83440

By pre-paid post
 By hand delivery
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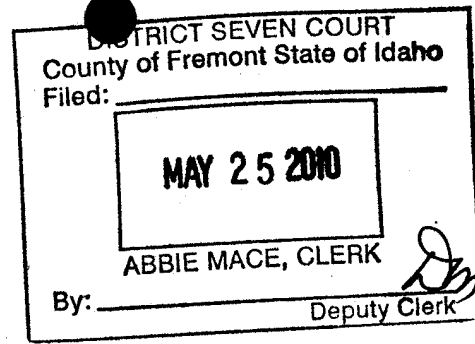
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ISB No. 6969

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho corporation,

Defendant.

Case No. CV-10-36

**REPLY IN SUPPORT OF DEFENDANT'S
RULE 56(b) MOTION FOR SUMMARY
JUDGMENT**

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**REPLY IN SUPPORT OF DEFENDANT'S RULE 56(b) MOTION FOR SUMMARY
JUDGMENT - Page 1**

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948549/1/JMB/103889-0003

INTRODUCTION

The focus of Bollinger's opposition to summary judgment, and where she places the most emphasis in her brief, is her contention that she was not an at-will employee and, therefore, that Fall River Electric's decision to include her in a lay-off of five employees was a breach of contract and the implied covenant of good faith and fair dealing. That contention and the facts on which Bollinger relies will be the focus of this Reply. As explained below, Bollinger's facts, even if true, do not support her claim, and she has failed to "set forth specific facts showing that there is a genuine issue for trial." I.R.C.P. 56(e).

REPLY

A. Bollinger's Claims for Retaliatory Discharge in Violation of Public Policy and Negligent and Intentional Infliction of Emotional Distress.

Before turning to Bollinger's arguments that she was not an at-will employee, Fall River Electric notes that, in her opposition brief, Bollinger did not advance a defense of her claim that her discharge was unlawful retaliation in violation of Idaho public policy because she had "expressed concerns over various serious safety issues." (Amend. Compl. ¶ 12.) Instead, Bollinger conceded that it was her job to express concerns over safety issues. (Bollinger Affidavit ¶ 13.) In light of that undisputed fact, Bollinger did not oppose Fall River Electric's position, supported by multiple authorities, that simply doing one's job is not activity protected by Idaho public policy. This claim clearly should be dismissed.

Similarly, Bollinger provided no legal support for her claims that the circumstances of her termination (which the parties do not dispute) could constitute negligent and/or intentional infliction of emotional distress. She simply disagreed that a negligent workplace injury would be preempted by Idaho's Workers Compensation Law and continued to insist that the manner of her

termination was “extreme and outrageous.” She failed, however, to distinguish Fall River Electric’s authorities and could not point to a single case where a court allowed a claim for negligent or intentional infliction of emotional distress to proceed under similar circumstances.

With respect to these three claims – retaliatory discharge in violation of public policy and negligent and/or intentional infliction of emotional distress – Fall River Electric does not believe further briefing would assist the Court and rests on its opening brief and the authorities cited therein.

B. Bollinger’s Termination Did Not Breach an Express or Implied Contract of Employment or Covenant of Good Faith and Fair Dealing.

As noted, Bollinger’s defense against summary judgment is focused primarily on attempting to establish an issue of fact as to whether she was an at-will employee. To that end, she points to, and cites extensively from, several written policies of Fall River Electric. For purposes of clarity, it is important for the Court to understand that the policies cited at length by Bollinger were not all simultaneously in effect, such that they “contradicted” one another, as Bollinger seems to suggest. Later policies, such as Fall River Electric’s Employment-At-Will policy, expressly superseded and replaced earlier for-cause policies. (See Def’s Statement of Fact ¶ 9.)

In summary, Bollinger argues that Fall River Electric did not have an at-will employment policy until spring 2009, a few months before her layoff, and that this change was made by the Cooperative’s new General Manager, Bryan Case, “so that he could rid himself of [Bollinger].” (Pltf’s Br. at 15.) Bollinger further contends that she was told upon her hiring in 1988 that “if I did my job well, I could be a long-term employee,” that she had “an impression that I would be [at Fall River Electric] a long time because people retired from there”; and that she believed “that

there was a policy in effect at the time . . . that said we would not be fired except for ‘cause.’”

(*Id.* at 17-18.)

The problem with Bollinger’s theory of liability is that it is not supported by the law or the facts in the record, and it is actually contradicted by the Cooperative’s policies that she cites in her brief. For that reason and the others summarized below, summary judgment is appropriate:

First, Bollinger concedes that she had no written employment agreement for a fixed term with Fall River Electric. Accordingly, she is presumed to have been an at-will employee, and, to avoid summary judgment, she must come forward with some evidence of an express or implied limitation on her at-will employment. *Mitchell v. Zilog, Inc.*, 125 Idaho 709, 712 (1994).

Second, Bollinger did not submit any evidence that she was unaware of Fall River Electric’s change to an at-will employer. In her declaration, she makes no such contention, nor could she, given the undisputed fact that she was emailed a copy of the Cooperative’s 2009 at-will policy. (See Def’s Statement of Fact ¶ 10; Case Aff. ¶ 11, Ex. 4.) Moreover, in support of her opposing brief, Bollinger introduced and cited as evidence the at-will disclaimer in Cooperative’s General Policy No. 601.0, adopted in October 2003 almost six years before her termination *and five years before the arrival of Bryan Case*.¹ She emphasized herself (with bold and underlined text) the at-will nature of her employment:

It is also important for all managers and employees to understand that employment with the Cooperative is entirely voluntary. The Cooperative’s personnel policies are not intended

¹ In its opening brief, Fall River Electric also pointed out that it had an at-will provision in its “Work Standards and Personal Conduct Policy,” promulgated in 2004. (Case Aff. ¶ 9, Ex. 2.) Bollinger’s assertion that Bryan Case, who arrived in 2009 to assume the role as General Manager, caused Fall River Electric to change to an at-will employer to “rid himself of [Bollinger]” is simply untrue and unsupported by the record.

and cannot be implied to create an employment contract or to guarantee permanent employment or employment for any fixed or set time period.

The employee or the Cooperative may terminate the employment relationship at any time for any lawful reason . . .

(Pltf's Br. pp. 7-8, Ex. 2B) (emphasis by Bollinger). The remainder of that cited excerpt, which Bollinger omitted, provided that: "No manager has any authority to make any other agreement to the contrary unless such agreement is specified in writing and approved by the Board of Directors." (*Id.*)

For reasons unexplained, Bollinger contends that the foregoing was not a "provision for "At-Will-Employment." (*Id.* at pg. 8.) Of course, that is precisely what it was.

Third, Bollinger's "impressions" of a for-cause termination policy based on statements made at the time of her hiring that "if I did my job well, I could be a long-term employee" and her subsequent observations that "people rarely left" Fall River Electric and "retired from there" are not sufficient to rebut her at-will status. As a threshold matter, Bollinger had no right to reasonably rely on observations and statements made at the time of her hiring in light of the express at-will disclaimers that Fall River Electric promulgated in its policies subsequent to Bollinger's hiring, which policies she does not dispute receiving.

In addition, "general expressions of job longevity and advancement," such as those relied on by Bollinger here, "are not, as a matter of law, sufficient to establish a prima facie case rebutting the at-will employment presumption." *Atwood v. Western Const., Inc.*, 129 Idaho 234, 239 (Idaho App. 1996) (quoting *Vanchen v. GNLV Corp.*, 105 Nev. 417, 777 P.2d 366, 370 (1989)). Among other reasons, even if construed as an oral contract for employment until retirement, such expressions can run afoul of Idaho's statute of frauds, I.C. § 9-505. *See, e.g.*,

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Burton v. Atomic Workers Federal Credit Union, 119 Idaho 17, 19-20 (1990) (holding that trial court erred in rejecting employer's statute of frauds defense to alleged oral promise that employee "would not be terminated without 'just cause' before she reached the age of retirement, age 65"). Similarly, "observations" that a company does not fire employees often or without a good reason are insufficient to establish that a company does not maintain an at-will employment policy. *Atwood, supra*, 129 Idaho at 240.

Fourth, even if Bollinger could not be terminated except for cause at the time of her hiring in 1988, Fall River Electric had the right under Idaho law to subsequently alter the terms of her employment to at-will, which it undisputedly did. See discussion of *Parker v. Boise Telco Federal Credit Union*, 129 Idaho 248 (Idaho App. 1996), at Def's opening brief at pp. 12-14. Bollinger does not attempt to distinguish *Parker* in her opposition. As *Parker* makes clear, Fall River Electric's unilateral change from a termination "for cause" policy to an "at-will" policy was valid, and Bollinger accepted the change by continuing to work at Fall River Electric. See *Watson v. Idaho Falls Consolidated Hospitals, Inc.*, 111 Idaho 44, 48 (1986) ("the employees' bargained-for action needed to make the offer binding [is] their continued work when they have no obligation to continue"). Under those circumstances, Bollinger cannot simply continue to rely on statements made to her 21 years ago, when she was first hired.

C. Even if Bollinger Was Subject to Fall River Electric's Former Termination-For-Cause Policy, there Was No Breach.

As a final matter, in her opposition to summary judgment, Bollinger failed to provide any evidence to dispute Fall River Electric's point that, even if she remained protected under the Cooperative's old "for cause" termination policy, she still could not establish that the Cooperative had breached its terms.

As explained in Fall River Electric's opening brief, even under the Cooperative's old "for cause" policy, it had the right to lay off any employee because of "lack of work." If the Court finds that this old policy remained in effect as to Bollinger, it should enforce only its terms; Fall River Electric will stipulate to its provisions. Accordingly, there is no disputed issue for trial, and summary judgment is appropriate.

CONCLUSION

For the foregoing reasons, Fall River Electric respectfully requests that the Court grant summary judgment in Fall River's favor and dismiss Bollinger's claims with prejudice.

DATED this 18th day of May, 2010.

ATER WYNNE LLP

By: 

Jathan Janove, ISB #6969

James M. Barrett, OSB #011991

(Admitted pro hac vice)

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **REPLY IN SUPPORT OF DEFENDANT'S**
RULE 56(b) MOTION FOR SUMMARY JUDGMENT on the following:

John M. Ohman
cobjmo@ida.net
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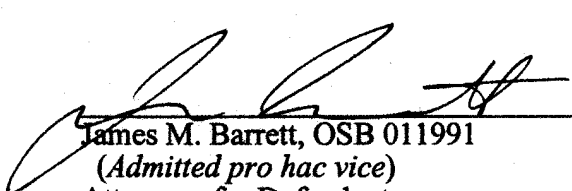
Attorney for Plaintiff

by electronic transmission and U.S. First-Class Mail a true and correct copy thereof to said parties on the date stated below.

In addition, a courtesy copy of this document was sent by U.S. First-Class Mail to the following on the date stated below:

The Honorable Darren B. Simpson
District Judge
501 North Maple, #205
Blackfoot, ID 83221

DATED this 18th day of May, 2010.


James M. Barrett, OSB 011991
(Admitted pro hac vice)
Attorneys for Defendant

CERTIFICATE OF SERVICE

COURT MINUTES

CV-2010-0000036

Suzette Y Bollinger vs. Fall River Rural Electric Cooperative, Inc, etal.

Hearing type: Hearing - Motion for Summary Judgment

Hearing date: 5/27/2010 Time: 12:59 pm

Judge: Darren B. Simpson

Court reporter: Sandra Bebee

Minutes Clerk: Becky J. Harrigfeld

Tape Number: Disk 16

DISTRICT SEVEN COURT County of Fremont State of Idaho Filed: _____ <div style="border: 1px solid black; padding: 5px; text-align: center;">MAY 27 2010</div> ABBIE MACE, CLERK <i>Am</i> By: _____ Deputy Clerk

Party: Fall River Rural Electric Cooperative, Inc, Bryan Case Attorney: James Barrett & Hyrum Erickson

Party: Suzette Bollinger, Attorney: John Ohman

-
- 1259 Court is in session. Judge goes over pleadings with the attorney's to make sure that he has all the documents needed for the hearing.
- 105 Mr. Barrett presents his case. Ms. Bollinger was laid off due to economy and the fact that 5 people were laid off at the time.
- 111 He will touch on the Intentional Infliction and Emotional Distress claim. Closed door meeting, she was offered severance and letters of recommendation.
- 113 Retaliation Claim – Fall River disputes the safety issues that were raised. He argues that it was her job and not protected policy.
- 116 Modification to personal policies that employees were “at will”. Policy did not occur after Mr. Case took the job. Policy was in place in 2003 or 2004.
- 118 Court questions Mr. Barrett regarding at will or for cause employee with regards to his brief. Mr. Barrett responds.
- 129 Mr. Barrett concludes his argument. Mr. Ohman begins his argument. He states that his client does not concede any claim. Mr. Case became manager in 2009 and policy was changed 4 months later.
- 132 Intentional infliction of emotional distress began shortly after Mr. Case became

manager and the culmination was the termination.

135 Mr. Ohman continues to argue regarding other claims.

142 Mr. Ohman concludes and asks that the court deny the motion and set for jury trial. Mr. Barrett rebuts.

149 Mr. Barretts speaks to the seniority policy. She was the only one in her position and there was noone whom she had seniority over.

154 Mr. Barrett concludes. Nothing further. Court is recess.

July 15, 2010
AT 3:45 a.m.

Darren B. Simpson
DARREN B. SIMPSON
DISTRICT JUDGE

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,)
)
Plaintiff,)
)
vs.)
)
FALL RIVER RURAL ELECTRIC)
COOPERATIVE, INC., an Idaho)
corporation,)
)
Defendant.)

Case No. CV-2010-36

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

I. STATEMENT OF THE CASE

Defendant Fall River Rural Electric Cooperative, Inc., an Idaho corporation (hereinafter "Fall River"), filed a Motion for Summary Judgment¹ in the above-styled and numbered breach of employment contract lawsuit filed by Suzette Bollinger (hereinafter "Bollinger").² Bollinger opposed Fall River's Motion.³

Bollinger filed this action for breach of express or implied contract, retaliatory discharge, wrongful termination, and negligent and intentional infliction of emotional

¹ Defendant's Rule 56(b) Motion for Summary Judgment, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed April 23, 2010) (hereinafter "**Fall River's Motion**").

² Amended Complaint and Demand for Jury Trial, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed February 3, 2010) (hereinafter the "**Amended Complaint**").

³ Plaintiff's Reply Memorandum in Opposition to Defendant's Motion for Summary Judgment, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed May 17, 2010) (hereinafter "**Bollinger's Memorandum**").

distress based upon her termination from employment with Fall River.⁴ Fall River generally denied Bollinger's claims and alleged numerous affirmative defenses including: failure to state a claim, at-will employment, failure to mitigate damages, waiver, estoppel, ratification/acquiescence/consent/agreement, statute of limitations, and exclusivity of Idaho's Workers' Compensation Law.⁵

A hearing was held on Fall River's Motion on May 27, 2010.⁶ Based upon the parties' pleadings, the record, and the relevant authorities, Fall River's Motion shall be granted.

II. ISSUES

Fall River argues that Bollinger was an at-will employee and therefore her termination did not breach any express or implied contract or the covenant of good faith and fair dealing.⁷ In the alternative, Fall River argues that it did not breach the "for cause" policy of Bollinger's original employment contract.⁸ Fall River also argues that it did not terminate Bollinger in violation of public policy.⁹ Fall River relies on the Idaho Workers' Compensation Law as preemptive of Bollinger's negligent infliction of emotional distress claim.¹⁰ Finally, Fall River takes the position that Bollinger has not stated a *prima facie* case of intentional infliction of emotional distress.¹¹

⁴ Amended Complaint, at pp. 2-4.

⁵ Defendant's Answer and Affirmative Defenses to Amended Complaint, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed February 16, 2010).

⁶ Court Minutes, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed May 27, 2010).

⁷ Memorandum in Support of Defendant's Rule 56(b) Motion for Summary Judgment, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed April 23, 2010) (hereinafter "**Fall River's Memorandum**"), at pp. 11-14.

⁸ Fall River's Memorandum, at p. 14.

⁹ Fall River's Memorandum, at pp. 15-19.

¹⁰ Fall River's Memorandum, at pp. 19-20.

¹¹ Fall River's Memorandum, at pp. 20-23.

Bollinger responds that she set forth facts in her complaint which state a claim upon which relief may be granted; her termination was a breach of Fall River's express and/or implied contract; Fall River's termination of Bollinger breached Fall River's covenant of good faith and fair dealing; Bollinger's infliction of emotion distress claim is not related to worker's compensation law; and the means by which Fall River terminated Bollinger caused intentional infliction of emotional distress.¹²

Based upon these arguments, the relevant issues are as follows:

- (1) Was Bollinger an at-will employee of Fall River?
- (2) Has Bollinger plead facts which support her claim that Fall River terminated her in violation of public policy?
- (3) Has Bollinger stated a claim for negligent infliction of emotional distress?
- (4) Has Bollinger stated a claim for intentional infliction of emotional distress?

III. FINDINGS OF FACT

The following facts are found by a preponderance of the evidence, with all reasonable inferences drawn in favor of Bollinger.¹³

1. In 1988, Bollinger took a job with Fall River as a cashier/receptionist.¹⁴
2. Bollinger alleges she signed an employment contract with Fall River.¹⁵

Bollinger did not produce a signed employment contract for the record, however.

¹² Bollinger's Memorandum.

¹³ See: *Bushi v. Sage Health Care, PLLC*, 146 Idaho 764, 768, 203 P.3d 694, 698 (2009).

¹⁴ Affidavit of Suzette Bollinger in Opposition to Defendant's Motion for Summary Judgment, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed May 17, 2010) (hereinafter the "**Bollinger Affidavit**"), at p. 2, ¶ 5.

¹⁵ See: Amended Complaint, at p. 2, ¶ 6;

3. At the time Bollinger was hired, Fall River maintained a written, “for cause” termination policy for regular employees (hereinafter “General Policy No. 615.0”).¹⁶ An exception existed in the event of layoffs based upon lack of work.¹⁷

4. In October of 2004, Fall River adopted General Policy No. 614.1 (hereinafter the “General Policy No. 614.1”).¹⁸ After a detailed account of Fall River’s disciplinary standards, General Policy No. 614.1 Policy states:

This policy is not intended nor should it be implied to create an employment contract or a guarantee of employment. Employment with the Cooperative is voluntary and may be terminated by the employee or the Cooperative at any time for any lawful reason.¹⁹

General Policy No. 614.1 superseded any existing, conflicting policy.²⁰

5. In 2008, after other promotions and assignments, Fall River promoted Bollinger to the position of Safety & Loss/Facility Director.²¹ Bollinger’s duties and responsibilities as Safety & Loss/Facility Director included notifying Fall River’s management of any failure by Fall River to comply with applicable state and federal safety laws, rules, and regulations.²²

6. On or about January 20, 2009, Bryan Case (hereinafter “Case”) became the General Manager of Fall River.²³

¹⁶ Affidavit of Bryan Case in Support of Defendant’s Rule 56(b) Motion for Summary Judgment, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed April 23, 2010) (hereinafter the “Case Affidavit”), at p. 3, ¶ 8, and at Exhibit 1, p. 2.

¹⁷ Case Affidavit, at p. 3, ¶ 9, and at Exhibit 1, p. 1.

¹⁸ Case Affidavit, at p. 3, ¶ 9 and at Exhibit 2.

¹⁹ Case Affidavit, at Exhibit 2, p. 5, ¶ II.D.

²⁰ Case Affidavit, at Exhibit 2, p. 6, ¶ IV.

²¹ Bollinger Affidavit, at p. 2, ¶¶ 6-8.

²² Bollinger Affidavit, at p. 3, ¶ 13.

²³ Bollinger Affidavit, at p. 4, ¶ 21.

7. According to Bollinger, Case refused to implement or follow safety rules and regulation of which Bollinger made him aware; ignored requirements for equipment, procedures and regulations; and became hostile toward Bollinger.²⁴

8. In March of 2009, Fall River adopted General Policy No. 601.0 (hereinafter "General Policy No. 601.0"), which states, in relevant part:

Employees who do not have a separate, individual written employment contract signed by the President of General Manager of the Cooperative are employed at the will of the Cooperative and are subject to termination at any time, for any reason, with or without cause or notice, except as prohibited by law or by the express provisions of any applicable labor agreement. Similarly, employees may terminate their employment at any time and for any reason.²⁵

...

Nothing contained in this manual, employee handbooks, employment applications, Cooperative memoranda, or other materials provided to employees in connection with their employment require the Cooperative to have just cause in order to terminate an employee or otherwise restrict the Cooperative's right to terminate any employee at any time or for any reason. Provided, however, that the Cooperative will not terminate any employee for reasons that violate state or federal law, or the express provisions of any applicable labor agreement.²⁶

...

This policy supersedes any existing policy that may be in conflict with the provisions of this policy. This policy does not represent a contract between the employer and employee, and the employer herein may change the policies alone and without notice.²⁷

9. During her twenty-one (21) years of employment with Fall River, Bollinger was aware of Fall River's personnel policies.²⁸

²⁴ Bollinger Affidavit, at p. 5, ¶ 24.

²⁵ Case Affidavit, at p. 3, ¶ 10, and at Exhibit 3, p. 1, ¶ III.A.

²⁶ Case Affidavit, at Exhibit 3, p. 2, ¶ III.D.

²⁷ Case Affidavit, at Exhibit 3, p. 2, ¶ V.

²⁸ Bollinger Affidavit, at pp. 5-6, ¶ 31. See also: Case Affidavit, at Exhibit 4.

10. On July 28, 2009, Bollinger was called into a meeting with Case and others and informed that her position had been eliminated and she was no longer employed by Fall River.²⁹ According to Bollinger, a Safety & Loss/Facility Director position is required by the National Rural Electric Cooperative Association.³⁰

11. Following the meeting, Bollinger was escorted to her office and told to gather her personal belongings.³¹ Bollinger felt rushed by the thirty (30) minutes given to her to vacate her office.³²

12. Bollinger was not terminated for cause.³³ According to Case, Bollinger's position was reabsorbed by the Operations Manager who previously oversaw and administered Fall River's safety programs as part of a reduction in the workforce.³⁴

13. After Bollinger's termination, Case provided Bollinger with a letter of recommendation, as did another director, Mickie Funke.³⁵

IV. PRINCIPLES OF LAW

A. Summary Judgment Standard.

1. If the pleadings, depositions, and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, a court may grant summary judgment.³⁶ Disputed facts are construed in favor of the non-moving party and all reasonable

²⁹ Bollinger Affidavit, at p. 5, ¶ 26.

³⁰ *Id.*

³¹ Bollinger Affidavit, at p. 5, ¶ 27.

³² Bollinger Affidavit, at p. 5, ¶¶ 28-30.

³³ Case Affidavit, at p. 2, ¶ 2.

³⁴ Case Affidavit, at pp. 5-6, ¶¶ 19-21.

³⁵ Affidavit of James M. Barrett in Support of Defendant's Rule 56(b) Motion for Summary Judgment, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed April 23, 2010) (hereinafter the "**Barrett Affidavit**"), at Exhibit 1, p. 173.

inferences that can be drawn from the record are drawn in favor of the non-moving party.³⁷

2. A party against whom a summary judgment is sought cannot merely rest on its pleadings.³⁸ When faced with supporting affidavits or depositions, the opposing party must show material issues of fact which preclude the issuance of summary judgment.³⁹

3. While the moving party must prove the absence of a genuine issue of material fact,⁴⁰ the opposing party cannot simply speculate.⁴¹ A mere scintilla of evidence is not enough to create a genuine factual issue.⁴² Summary judgment is appropriate when the non-moving party cannot establish the essential elements of the claim.⁴³

4. If reasonable persons could reach differing conclusions on material issues, or draw conflicting inferences therefrom, then the motion for summary judgment must be denied.⁴⁴

B. The At-Will Employment Doctrine.

5. Unless an employee is hired pursuant to a contract that specifies the duration of the employment or limits the reasons for which an employee may be discharged, the

³⁶ Idaho Rule of Civil Procedure 56(c); *Bushi v. Sage Health Care, PLLC*, 146 Idaho 764, 768, 203 P.3d 694, 698 (2009); *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 516-7, 808 P.2d 851, 853-4 (1991).

³⁷ *Bushi v. Sage Health Care, PLLC*, 146 Idaho at 768, 203 P.3d at 698; *Lockheed Martin Corp. v. Idaho State Tax Commission*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006).

³⁸ *Partout v. Harper*, 145 Idaho 683, 688, 183 P.3d 771, 776 (2008); *R.G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 410, 797 P.2d 117, 118 (1990).

³⁹ *Esser Electric v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 919, 188 P.3d 854, 861 (2008).

⁴⁰ *Watkins v. Peacock*, 145 Idaho 704, 708, 184 P.3d 210, 214 (2008); *Wait v. Leavell Cattle, Inc.*, 136 Idaho 792, 798, 41 P.3d 220, 226 (2001).

⁴¹ *Cantwell v. City of Boise*, 146 Idaho 127, 133, 191 P.3d 205, 211 (2008).

⁴² *Van v. Portneuf Medical Center*, 147 Idaho 552, 556, 212 P.3d 982, 986 (2009); *West v. Sonke*, 132 Idaho 133, 138, 968 P.2d 228, 233 (1998).

⁴³ *Summers v. Cambridge Joint School District No. 432*, 139 Idaho 953, 956, 88 P.3d 772, 775 (2004); *Dekker v. Magic Valley Regional Medical Center*, 115 Idaho 332, 333, 766 P.2d 1213, 1214 (1989).

employment is at the will of either party and the employer may terminate the relationship at any time for any reason without incurring liability.⁴⁵

6. An employment contract is presumed to be at-will unless “the parties ... agree to a contract term limiting the right of either to terminate the contract at will.”⁴⁶

7. A limitation on the right of the employer or employee to terminate the employment can be express or implied.⁴⁷ A limitation will be implied when, from all the circumstances surrounding the relationship, a reasonable person could conclude that both parties intended that either party’s right to terminate the relationship was limited by the implied in fact agreement.⁴⁸

8. An implied-in-fact contract term is one that is inferred from the statements or conduct of the parties.⁴⁹ Such statements or conduct must manifest an intent to act or refrain from acting in a specified way, so made as to justify the understanding that a promise or commitment has been accorded.⁵⁰

9. A distinction is recognized between promises and mere statements of opinion or prediction.⁵¹ The inquiry is whether a reasonable person in the position of the listener would conclude that the speaker had made a promise or only expressed an opinion, prediction or expectation.⁵² This is a factual issue and ordinarily determined by a jury.⁵³

⁴⁴ *Van v. Portneuf Medical Center*, 147 Idaho at 556, 212 P.3d at 986; *Cramer v. Slater*, 146 Idaho 868, 873, 204 P.3d 508, 513 (2009).

⁴⁵ *Jenkins v. Boise Cascade Corporation*, 141 Idaho 233, 240, 108 P.3d 380, 387 (2005).

⁴⁶ *Jenkins v. Boise Cascade Corporation*, 141 Idaho at 240, 108 P.3d at 387 [citing: *Atwood v. Western Construction, Inc.*, 129 Idaho 234, 237, 923 P.2d 479, 482 (Ct. App. 1996)].

⁴⁷ *Jenkins v. Boise Cascade Corporation*, 141 Idaho at 240, 108 P.3d at 387.

⁴⁸ *Jenkins v. Boise Cascade Corporation*, 141 Idaho at 241, 108 P.3d at 388.

⁴⁹ *Metcalf v. Intermountain Gas Company*, 116 Idaho 622, 624, 778 P.2d 744, 746 (1989) [citing: 1 A. Corbin, § 17, at 38 (1960)].

⁵⁰ *Atwood v. Western Construction, Inc.*, 129 Idaho at 238, 923 P.2d at 483.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

However, if the evidence relating to the alleged promise is not conflicting and admits of but one inference, the issue may be decided as a matter of law.⁵⁴

10. An employee handbook can constitute an element of the contract between an employer and employee.⁵⁵ Unless the employee handbook specifically negates any intention on the part of the employer to have it become a part of the employment contract, a court may conclude from a review of the employee handbook that a question of fact is created regarding whether the handbook was intended by the parties to impliedly express a term of the employment agreement.⁵⁶

11. An employer, without express reservation of the right to do so, can unilaterally change its written policy from one of discharge for cause to one of termination at will.⁵⁷ For the modification “to become legally effective, reasonable notice of the change must be uniformly given to affected employees.”⁵⁸

C. Public Policy Exception to the At-Will Employment Doctrine.

12. The right to discharge an at-will employee is limited by considerations of public policy, such as when the motivation for the firing contravenes public policy.⁵⁹

13. The determination of what constitutes public policy sufficient to protect an at-will employee is a question of law.⁶⁰

14. The public policy exception to the at-will doctrine has been held to protect employees who refuse to commit unlawful acts, who perform important public obligations,

⁵⁴ *Id.*

⁵⁵ *Metcalf v. Intermountain Gas Company*, 116, Idaho at 625, 778 P.2d at 747.

⁵⁶ *Id.*

⁵⁷ *Parker v. Boise Telco Federal Credit Union*, 129 Idaho 248, 254, 923 P.2d 493, 499 (Ct. App. 1996).

⁵⁸ *Parker v. Boise Telco Federal Credit Union*, 129 Idaho at 254, 923 P.2d at 499 [citing: *Bankey v. Storer Broadcasting Company*, 432 Mich. 438, 443 N.W.2d 112 (1989)].

⁵⁹ *Van v. Portneuf Medical Center*, 147 Idaho at 561, 212 P.3d at 992.

⁶⁰ *Id.*

or who exercise certain legal rights and privileges.⁶¹ An employer may not discharge an at-will employee without cause when the discharge would violate public policy.⁶²

15. Once the court defines the public policy, the question of whether the policy was violated is one for the jury.⁶³

16. The public policy exception applies only to at-will employees.⁶⁴

D. The Covenant of Good Faith and Fair Dealing.

17. A covenant of good faith and fair dealing is implied in all employment agreements, including at-will employment relationships.⁶⁵

18. The covenant requires the parties to perform, in good faith, the obligations contained in their agreement, and a violation occurs when either party violates, qualifies, or significantly impairs any benefit or right of the other party under the contract, whether express or implied.⁶⁶

19. The covenant does not create a duty for the employer to terminate the at-will employee only for good cause, however.⁶⁷ The covenant only arises in connection with the terms agreed to by the parties, and does not create new duties that are not inherent in the employment agreement.⁶⁸

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ *Cantwell v. City of Boise*, 146 Idaho 127, 134 at fn. 3, 191 P.3d 205, 212 at fn. 3 (2008).

⁶⁵ *Van v. Portneuf Medical Center*, 147 Idaho at 562, 212 P.3d at 992.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

E. Negligent Infliction of Emotional Distress.

20. Negligent infliction of emotional distress is simply a category of the tort of negligence, requiring the elements of a common law negligence action.⁶⁹ These elements are: (1) a duty recognized by law requiring the defendant to conform to a certain standard of conduct; (2) a breach of that duty; (3) a causal connection between the conduct and the plaintiff's injury; and (4) actual loss or damage.⁷⁰

21. In addition to these elements, for a claim of negligent infliction of emotional distress to lie, there must be some physical manifestation of the plaintiff's emotional injury.⁷¹

22. In Idaho the exclusive remedy for an employee against his employer for injuries arising out of and in the course of employment is the worker's compensation law.⁷² However, a tort action may be maintained against the employer if the injury is not compensable under worker's compensation.⁷³

F. Intentional Infliction of Emotional Distress.

23. To recover for intentional infliction of emotional distress, Bollinger must show that (1) Fall River's conduct was intentional or reckless, (2) the conduct was extreme and outrageous, (3) there was a causal connection between the wrongful conduct and Bollinger's emotional distress, and (4) the emotional distress was severe.⁷⁴

⁶⁹ *Johnson v. McPhee*, 147 Idaho 455, 466, 210 P.3d 563, 574 (Ct. App. 2009) [citing: *Nation v. State, Department of Correction*, 144 Idaho 177, 189-91, 158 P.3d 953, 965-66 (2007)].

⁷⁰ *Johnson v. McPhee*, 147 Idaho at 466, 210 P.3d at 574 [citing: *Brooks v. Logan*, 127 Idaho 484, 489, 903 P.2d 73, 78 (1995)].

⁷¹ *Johnson v. McPhee*, 147 Idaho at 466, 210 P.3d at 574 [citing: *Black Canyon Racquetball Club, Inc. v. Idaho First National Bank*, 119 Idaho 171, 177, 804 P.2d 900, 906 (1991)].

⁷² *Roe v. Albertson's, Inc.*, 141 Idaho 524, 530, 112 P.3d 812, 818 (2005).

⁷³ *Id.*

⁷⁴ *Johnson v. McPhee*, 147 Idaho at 464, 210 P.3d at 572 [citing: *Spence v. Howell*, 126 Idaho 763, 774, 890 P.2d 714, 725 (1995)].

24. Liability for this intentional tort is generated only by conduct that is very extreme.⁷⁵

V. ANALYSIS

A. Bollinger was an At-Will Employee of Fall River.

Bollinger's basis for her breach of express or implied contract claims stems from Fall River's seniority policy.⁷⁶ Specifically, Bollinger points to language from Policy No. 604.0, entitled "Selection or Promotion of Personnel," which was adopted in January of 1977, and revised in May of 1989.⁷⁷ The relevant portion of Policy No. 604.0 reads:

All vacancies shall be filled by the best qualified applicant. Whenever there are employees within the Cooperative who are able to qualify, they will be given first consideration if all other qualifications are equal. Only if two or more employees have equal qualifications, will length of service be given consideration. Management reserves the right to make the final determination based on the needs of the Cooperative.⁷⁸

Bollinger also highlights the passing reference to seniority made in Policy No. 615.0 (adopted in March of 1977), which reads:

B. Lay-Off of Employees

If, because of lack of work, it is necessary to lay-off a regular employee, he (she) will be given:

1. Two week notice or the cash equivalent.
- ...
3. Priority in consideration for any subsequent vacancy for which he (she) is qualified.
4. Credit for prior service toward seniority and other length of service benefits upon subsequent re-employment.⁷⁹

⁷⁵ *Johnson v. McPhee*, 147 Idaho at 464, 210 P.3d at 572 [citing: *Edmondson v. Shearer Lumber Products*, 139 Idaho 172, 180, 75 P.3d 733, 741 (2003)].

⁷⁶ Amended Complaint, at p. 2, ¶¶ 7-8; Bollinger Affidavit, at pp. 5-6, ¶¶ 31-32

⁷⁷ Bollinger's Memorandum, at pp. 10-11.

⁷⁸ Bollinger's Memorandum, at p. 11; Affidavit of Authenticity in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV 2010-36 (filed May 17, 2010) (hereinafter the "Ohman Affidavit"), at Exhibit 4.

⁷⁹ Bollinger's Memorandum, at p. 12; Ohman Affidavit, at Exhibit 6, pp. 1-2.

Finally, Bollinger points to Policy No. 616.0, specifically entitled "Employee Seniority," which states, in pertinent part:

I. PURPOSE:

It is recognized that length of service to the Cooperative is an asset, and that the employees of the Cooperative need to be recognized for length of service.

II. POLICY:

When in the fair and impartial judgement [sic] of the management of the cooperative, skill, merit, ability, fitness and efficiency are substantially equal, seniority with the Cooperative shall given in making promotions, demotions, transfers, lay-offs and recalls.⁸⁰

In her deposition, Bollinger testified that she was given the impression that if she did her job well, she would be a long-term employee and retire from Fall River.⁸¹ Furthermore, she recalled that the rate of employees leaving Fall River was very low, which gave her the impression that she would be there for a long time.⁸² She also recalled a policy in effect when she was hired that termination could be based only upon cause.⁸³

Nothing in the record substantiates Bollinger's claim in her Amended Complaint that she signed an employment contract with Fall River. Furthermore, nothing in the record shows that Bollinger was hired for a specified term.

When Fall River hired Bollinger in 1988, its General Policy No. 615.0 provided that regular employees could only be discharged for cause, except in circumstances of a lay-off.⁸⁴ Fall River adopted General Policy No. 614.1 in 2004, which provided that employment with Fall River could be terminated at any time, by either party, for any

⁸⁰ Bollinger's Memorandum, at p. 13; Ohman Affidavit, at Exhibit 7.

⁸¹ Barrett Affidavit, at Exhibit 1, p. 209, lines 14-21.

⁸² Barrett Affidavit, at Exhibit 1, p. 210, lines 11-20.

⁸³ Barrett Affidavit, at Exhibit 1, p. 211, lines 2-5.

⁸⁴ Case Affidavit, at Exhibit 1.

lawful reason. Such language created an at-will employment policy. General Policy No. 615.0 superseded the conflicting “for cause” provision in General Policy No. 615.0.

In 2009, Fall River adopted General Policy No. 601.0, which again stated that Fall River employees were employed at-will. General Policy No. 601.0 superseded General Policy No. 615.0 to the extent the two policies conflicted.

The Idaho Court of Appeals has held that an employer may revise an employment policy unilaterally, so long as the employees receive notice of the revision. Although the record is not absolutely clear whether Bollinger received General Policy No. 614.1, Bollinger did admit that she received General Policy No. 601.0 in 2009. Since Bollinger admitted she received notice of Fall River’s revised employment policy, Fall River can rely upon its designation of Bollinger and her co-employees as at-will employees, subject to discharge without cause.

B. Fall River did Not Breach an Express or Implied Contract with Bollinger.

In the alternative, even if Bollinger was governed by General Policy No. 615.0, she has not shown that she was terminated for any other reason other than as part of a lay-off due to the downturn in the economy. On May 11, 2009, Fall River offered an early retirement package to employees who had attained a combined “years of employment plus years in age” totaling at least eighty (80).⁸⁵ Bollinger was aware of the early retirement offer.⁸⁶ She realized Fall River might lay other personnel off to cut costs.⁸⁷ Bollinger was laid off along with four (4) other employees of Fall River.⁸⁸

⁸⁵ Case Affidavit, at p. 5, ¶ 19.

⁸⁶ Ohman Affidavit, at Exhibit 9, p. 186, lines 8-13.

⁸⁷ Ohman Affidavit, at Exhibit 9, p. 186, lines 14-19.

⁸⁸ Case Affidavit, at p. 5, ¶ 20.

Under General Policy No. 615.0, Fall River was entitled to lay Bollinger off, provided Bollinger was given priority consideration for any subsequent vacancy for which she was qualified. Nothing in General Policy No. 615.0 requires “cause” as a basis for laying employees off. Bollinger does not argue that she applied for subsequent vacancies at Fall River.

With regard to Bollinger’s breach of an express or implied contract claim, Bollinger has not provided a written contract between herself and Fall River. General Policy No. 601.0 expressly stated that it was not to be considered a contract between Fall River and its employees. In the alternative, even if General Policy No. 615.0 still applied to Bollinger, Bollinger has not raised facts which, if true, show that Fall River breached its seniority policy in Bollinger’s case.

Although an implied contract term can be inferred from the statements or conduct of the parties, Bollinger has not shown that she was promised anything specific by Fall River. Instead, she testified that she was under the impression that if she did her job well, she would be a long-term employee and retire from Fall River. Indeed, General Policy No. 615.0, in place when Bollinger was hired, certainly required termination for cause, *unless* an employee was laid off. Bollinger’s impression was not in conflict with General Policy No. 615.0.

However, both General Policy No. 614.1, adopted in 2004, and General Policy No. 601.0, adopted in 2009, superseded conflicting portions of General Policy No. 615.0 and both informed Bollinger and other Fall River employees that they could be terminated at the will of Fall River.

Furthermore, even if General Policy No. 615.0 applied to Bollinger, Fall River did not breach either its “for cause” provision, since Bollinger was laid off, or its seniority provision, which gave Bollinger weighted status should she apply for a subsequent vacancy.

For these reasons, Bollinger has not raised a question of material fact with regard to her breach of express or implied contract theories.

C. Bollinger has Not Adduced Facts which Raise a Breach of Public Policy Issue.

Next, Bollinger argues that Fall River breached public policy by firing her in retaliation for her repeated notices to Fall River of allegedly serious safety concerns.⁸⁹ Bollinger was hired as the Safety & Loss/Facility Director in February of 2008.⁹⁰ Her job description required her to organize and direct Fall River’s safety programs, implement policies and procedures to assure compliance with Safety Loss Control Policies, keep safety records and accident reports, and coordinate with Fall River and other safety organizations and committees.⁹¹ She was expected to direct the Safety Incentive and Safety Compliance committees, direct Occupational Safety and Health Administration (“OSHA”) programs, provide monthly reports to the Board of Directors, purchase safety equipment, maintain safety records, and conduct inspections.⁹²

In her deposition, Bollinger testified to several circumstances in which Fall River did not take all of her advice with regard to safety issues.⁹³ For example, Bollinger was

⁸⁹ Amended Complaint, at p. 3, ¶ 15.

⁹⁰ Bollinger Affidavit, at p. 2, ¶ 8.

⁹¹ Case Affidavit, at Exhibit 5.

⁹² *Id.*

⁹³ *See*: Barrett Affidavit, at Exhibit 1, pp. 41 (arc flash clothing), 71 (fire extinguishers), 84 (safety railing), 110 (steel-toed boots), 143 (stairs).

concerned when a new budget failed to allot money for Arc flash clothing.⁹⁴ She discussed the situation with Larry Hamilton, the Operations Manager.⁹⁵ Hamilton realized the need for the clothing and, by March of 2009, Fall River received the minimum amount of Arc flash clothing.⁹⁶ Bollinger believed it was part of her job responsibility to bring the Arc flash clothing issue to the attention of the management.⁹⁷

Bollinger was informed by Federated Insurance of Fall River's failure to regularly inspect fire extinguishers in its buildings and vehicles.⁹⁸ As part of her job, Bollinger brought Fall River's attention to the fact that fire extinguishers were not being checked on a regular basis.⁹⁹ Bollinger undertook a spot check of the fire extinguishers.¹⁰⁰

Federated Insurance also informed Bollinger of improper railing at Fall River's Ashton office.¹⁰¹ Apparently Bollinger had a heated discussion with Case about the railing issue.¹⁰² Bollinger believed that it was part of her job responsibility to report the improper railing.¹⁰³ At the time Bollinger was laid off, she was still waiting for another bid for cheaper railing.¹⁰⁴

Bollinger, as part of her job responsibilities, informed Fall River management that employees should wear steel-toed boots.¹⁰⁵ Bollinger made an official recommendation to Fall River about protective footwear for employees.¹⁰⁶ However, Fall River had hard

⁹⁴ Barrett Affidavit, at Exhibit 1, p. 41.

⁹⁵ *Id.* See also: Bollinger Affidavit, at p. 2, ¶ 11.

⁹⁶ Barrett Affidavit, at Exhibit 1, pp. 42, 71.

⁹⁷ Barrett Affidavit, at Exhibit 1, p. 42.

⁹⁸ Bollinger Affidavit, at p. 4, ¶ 16.

⁹⁹ Barrett Affidavit, at Exhibit 1, p. 71.

¹⁰⁰ Barrett Affidavit, at Exhibit 1, p. 97.

¹⁰¹ Bollinger Affidavit, at p. 4, ¶ 16.

¹⁰² Barrett Affidavit, at Exhibit 1, p. 84.

¹⁰³ *Id.*

¹⁰⁴ Barrett Affidavit, at Exhibit 1, p. 162.

¹⁰⁵ Barrett Affidavit, at Exhibit 1, p. 111.

¹⁰⁶ Barrett Affidavit, at Exhibit 1, p. 125.

metal protective coverings for boots hanging in the warehouse.¹⁰⁷ Apparently these boot coverings were difficult to wear, and therefore never used.¹⁰⁸

Bollinger, also as part of her job responsibilities, brought Case's attention to the safety issues surrounding a public event at Buffalo Hydro and the damaged stairs at that location.¹⁰⁹ Bollinger received information about the improper stairs at Buffalo Hydro from Federated Insurance.¹¹⁰

Bollinger never threatened to go to OSHA or any other regulatory authority with safety issues because she felt loyal to Fall River and did not want Fall River to get into trouble.¹¹¹

Bollinger gave only conclusory and speculative statements about her termination against public policy. Specifically, Bollinger testified:

Mr. Case refused to implement or to follow safety rules and regulations of which I made him aware, and would instead veto, shame or ridicule me; he became hostile toward me and ignored requirements for equipment; procedures; and regulations.

Mr. Case was not concerned for the safety of [Fall River's] employee [sic], especially those employees and others that worked with and on well and heating systems.¹¹²

The evidence in the record is too vague and inconclusive to support a finding that Bollinger was terminated in violation of public policy. The Arc flash clothing issue was recognized by Operations Manager Hamilton and accommodated, at least to a minimum degree. The fire extinguisher, improper railing, and damaged stairs issues were initially

¹⁰⁷ Ohman Affidavit, at Exhibit 9, pp. 187-188.

¹⁰⁸ *Id.*

¹⁰⁹ Barrett Affidavit, at Exhibit 1, p. 143.

¹¹⁰ Bollinger Affidavit, at p. 4, ¶ 16.

¹¹¹ Barrett Affidavit, at Exhibit 1, p. 207.

¹¹² Bollinger Affidavit, at p. 5, ¶¶ 24-25.

raised not by Bollinger, but by Federated Insurance. Bollinger then passed the concerns on to management. It can be inferred therefrom that the fire extinguisher, improper railing, and damaged stairs concerns would have been brought to someone else's attention by Federated Insurance, had Bollinger not held the Safety & Loss/Facility Director position. The steel-toed boot issue had a resolution, albeit a less-than-perfect one: the hard metal protective coverings that employees refused to wear due to the fact that they were difficult to put on.

None of these issues, raised by Bollinger as an admitted part of her job description, show that Case refused to implement or follow safety rules. The fact that Fall River management, or Case, may not always have agreed with Bollinger's concerns or suggestions, or may not have felt comfortable with an immediate outlay of funds in an already stressed economic situation, does not support Bollinger's position. Indeed, Bollinger admitted that Fall River purchased some Arc flash clothing when the issue was raised by Bollinger. When Federated Insurance informed Bollinger that fire extinguishers were not being checked on a regular basis, Bollinger conducted a spot check of the extinguishers. Bollinger was working on a less costly alternative to the improper railing when she was terminated. The steel-toed boot issue had a solution, with the clumsy alternatives that employees refused to wear. In addition, Case testified that in 2009, Fall River spent more on safety in 2009 than in any recent year.¹¹³

Furthermore, in light of Fall River's early retirement offer, the other four lay-offs which occurred simultaneously to Bollinger's, and the assumption of Bollinger's duties

¹¹³ Case Affidavit, at p. 4, ¶ 17.

by the Operations Manager (thus eliminating Bollinger's position), the evidence suggests that Bollinger was laid off due to the downturn in the economy.

For these reasons, Bollinger has not raised an issue of material fact with regard to her allegation that she was fired in contravention of public policy.

D. Bollinger has Not Raised a Material Fact Issue as to her Breach of the Covenant of Good Faith and Fair Dealing Claim.

Bollinger bases her breach of the covenant of good faith and fair dealing claim upon the fact that Fall River terminated her without cause.¹¹⁴ In her Memorandum, she also argues that she was discharged in contravention of public policy.¹¹⁵

As shown above, the evidence infers Bollinger was laid-off due to an economic down-turn. She was an at-will employee, therefore Fall River could legally terminate her without cause. In the alternative, even if the former "for cause" policy still applied to her, Bollinger was laid-off, a situation that did not require a showing of cause.

Furthermore, Bollinger does not provide facts which, if taken as true, substantiate her claim that she was terminated based upon her safety suggestions or otherwise infer that she was terminated for any reason other than the economy. Therefore, Bollinger's claim that Fall River breached its covenant of good faith and fair dealing fails for lack of factual support.

E. Bollinger's Negligent Infliction of Emotional Distress Claim is Not Preempted by Idaho's Worker's Compensation Law, but Fails for Lack of a Showing of a Breach of a Legal Duty.

Fall River maintains that any negligence-based theory of liability is preempted by Idaho's Worker's Compensation law, Idaho Code §§72-201, *et seq.*¹¹⁶ Eligibility under

¹¹⁴ Amended Complaint, at p. 3, ¶13.

¹¹⁵ Bollinger's Memorandum, at pp. 26-27.

worker's compensation requires a showing that the injury was caused by an accident arising out of and in the course of employment, however.¹¹⁷ Injury is "construed to include only an injury caused by an accident, which results in violence to the physical structure of the body."¹¹⁸

Here, Bollinger does not claim injury to the physical structure of her body as a result of an accident, but mental distress: anxiety, insomnia, depression, and irritability. Furthermore, she does not premise her alleged mental injuries upon an accident, but intentional conduct by employees of Fall River. Bollinger cannot recover for mental distress resulting from intentional conduct under the worker's compensation laws. Therefore, Bollinger's negligent infliction of emotional distress is not preempted thereby.

To maintain her claim for negligent infliction of emotional distress, Bollinger must show that Fall River breached a recognized legal duty.¹¹⁹ Bollinger claims Fall River breached its duty of good faith and fair dealing by terminating her without cause after twenty-one (21) years of satisfactory service.¹²⁰

As shown above, Fall River's termination of Bollinger without cause did not breach a duty Fall River owed to Bollinger, since Bollinger was an at-will employee, subject to termination without cause at any time. In addition, Bollinger did not claim facts which would show that Fall River terminated her in contravention to public policy. In the alternative, even if Fall River's General Policy No. 615.0, in place when Bollinger was hired in 1988, could be considered a contract, Fall River reserved the right therein to

¹¹⁶ Fall River's Memorandum, at p. 19.

¹¹⁷ *Roe v. Albertson's, Inc.*, 141 Idaho at 530, 112 P.3d at 818.

¹¹⁸ *Roe v. Albertson's, Inc.*, 141 Idaho at 531, 112 P.3d at 819 [citing: Idaho Code § 72-102(17)(c)].

¹¹⁹ *Akers v. Mortensen*, 147 Idaho 39, 48, 205 P.3d 1175, 1184 (2009).

¹²⁰ Amended Complaint, at pp. 3-4, ¶ 16.

lay-off employees where necessary, without cause. Thus, Bollinger has not shown facts which, if true, satisfy one of the required elements of proof for a negligent infliction of emotional distress claim.

Moreover, Bollinger must show physical manifestations of her emotional distress in order to recover under a negligent infliction of emotional distress theory.¹²¹ Bollinger alleges that, as a result of Fall River's conduct, she was diagnosed with post-traumatic stress syndrome, and suffers from anxiety, depression, insomnia, and irritability.¹²² She claims she is required to take medication for depression and rely upon sleeping pills for emotional stress.¹²³

Under Idaho Rule of Evidence 701, this Court has discretion to allow Bollinger to give her opinion regarding certain matters.¹²⁴ This Court's discretion is examined under a three part test: 1) whether the Court correctly perceived the issue as one of discretion, 2) whether the Court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the consideration of an award, and 3) whether the Court reached its decision by an exercise of reason.¹²⁵

Although Bollinger may testify to physical ailments she has experienced such as anxiety, insomnia and irritability,¹²⁶ her testimony as to the cause of a medical condition, such as post-traumatic stress syndrome and depression, is inadmissible.¹²⁷ Bollinger does not offer testimony from her doctor or her therapist substantiating her claims of depression or post-traumatic stress syndrome.

¹²¹ *Cook v. Skyline Corporation*, 135 Idaho 26, 34, 13 P.3d 857, 865 (2000).

¹²² Amended Complaint, at p. 4, ¶ 17. See also: Bollinger's Affidavit, at pp 6-7, ¶¶ 37-39.

¹²³ Bollinger Affidavit, at p. 7, ¶ 39.

¹²⁴ See: *Cook v. Skyline Corporation*, 135 Idaho at 35, 13 P.3d at 866.

¹²⁵ *Sun Valley Shopping Center v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

As for Bollinger's claims of anxiety, insomnia, and irritability, Bollinger offers no substantiation that these physical manifestations were caused by Fall River's conduct in effecting her termination (surprise, coupled with a short period of time in which to collect her personal items and leave the office). Instead, Bollinger testifies that she suffered these physical manifestations "after [her] termination."¹²⁸ She affied that she must take medication because Fall River disregarded her 21 years of loyalty and dedication....¹²⁹ She states that she was a Fall River employee for nearly half of her life and that Fall River's actions affected her self-confidence, self-esteem, and identity.¹³⁰ Although Bollinger is more particular in a single paragraph of her Affidavit, wherein she states that Fall River disregarded her employee rights and caused loss of dignity when it forced her out of her office on July 28, 2009,¹³¹ this single paragraph must be weighed against the testimony wherein Bollinger appears to claim that the loss of her long-term job was the cause of her claimed ailments.

Based upon Bollinger's testimony, it is quite plausible that Bollinger suffered her claimed physical manifestations as a result of losing her job of twenty-one years, her earned level of income, her social/professional relationships, and her status in the community. Legitimate termination after a long career, which results in psychological injury, does not rise to the level of negligent infliction of emotional distress.

Based upon these findings, Bollinger has not stated a claim for negligent infliction of emotional distress.

¹²⁶ See: *Cook v. Skyline Corporation*, 135 Idaho at 35, 13 P.3d at 866.

¹²⁷ See: *Evans v. Twin Falls County*, 118 Idaho 210, 219, 796 P.2d 87, 96 (1990).

¹²⁸ Bollinger's Affidavit, at p. 6, ¶ 37.

¹²⁹ Bollinger Affidavit, at p. 7, ¶ 39.

¹³⁰ Bollinger Affidavit, at p. 7, ¶ 41.

F. Bollinger has Not Pleaded Facts which Rise to the Level of Intentional Infliction of Emotional Distress.

In order to survive summary judgment as to her intentional infliction of emotional distress claim, Bollinger must offer facts, which, if taken as true, show that Fall River's conduct was not merely unjustifiable; but rose to the level of "atrocious" and "beyond all possible bounds of decency," such that it would cause an average member of the community to believe that it was outrageous.¹³² Even if the conduct is unjustifiable, it does not necessarily rise to the level of "atrocious" or "beyond all bounds of human decency" such as to cause an average member of the community to believe that it was outrageous.¹³³

Furthermore, the focus must be upon Fall River's conduct, rather than Bollinger's emotional injury. Even if it can be said that Bollinger suffered extreme emotional injury, no damages can be awarded unless Fall River's conduct was extreme and outrageous.¹³⁴

Examples of conduct that has been deemed sufficiently extreme and outrageous by Idaho courts include: an insurance company speciously denying a grieving widower's cancer insurance claim while simultaneously impugning his character and drawing him into a prolonged dispute;¹³⁵ prolonged sexual, mental, and physical abuse inflicted upon a woman by her co-habiting boyfriend;¹³⁶ recklessly shooting and killing someone else's donkey that was both a pet and a pack animal;¹³⁷ and real estate developers swindling a

¹³¹ See: Bollinger Affidavit, at p. 7, ¶ 42.

¹³² *Edmondson v. Shearer Lumber Products*, 139 Idaho at 180, 75 P.3d at 741.

¹³³ *Nation v. State, Department of Correction*, 144 Idaho at 192, 158 P.3d at 968.

¹³⁴ *Id.* [citing: *Edmondson v. Shearer Lumber Products*, 139 Idaho at 179, 75 P.3d at 740.

¹³⁵ *Walston v. Monumental Life Insurance Company*, 129 Idaho 211, 219-20, 923 P.2d 456, 464-65 (1996).

¹³⁶ *Curtis v. Firth*, 123 Idaho 598, 605-07, 850 P.2d 749, 756-57 (1993).

¹³⁷ *Gill v. Brown*, 107 Idaho 1137, 1138-39, 695 P.2d 1276, 1277-78 (Ct.App.1985).

family out of property that was the subject of their lifelong dream to build a Christian retreat.¹³⁸

In this case, Fall River, in exercising a legal right, notified Bollinger without warning that her employment with Fall River was terminated. Bollinger was offered a severance package and given severance documents to look over.¹³⁹ Case informed Bollinger that Fall River would allow her to claim unemployment.¹⁴⁰

Bollinger was then escorted to her office and asked to retrieve her personal effects quickly. Larry Hamilton and Mickie Funke took Bollinger's personal items off of her counter and walls and placed them in boxes.¹⁴¹ Bollinger was offered a ride home, which she declined.¹⁴² Bollinger does not offer any evidence as to how the other laid-off employees were allowed to clean out their offices.

After Bollinger had left the Fall River premises, she called Larry Hamilton and asked if she could retrieve some manuals from her office.¹⁴³ Hamilton consented and, escorting Bollinger back to her old office, allowed her to retrieve the desired manuals.¹⁴⁴ Bollinger later retrieved some of her personal photographs from her computer.¹⁴⁵ Bollinger subsequently requested and received recommendation letters from Case and Mickie Funke.¹⁴⁶

The conduct of which Bollinger complains is far from extreme or outrageous. Being asked to leave and collect personal effects, on short notice, with little prior

¹³⁸ *Spence v. Howell*, 126 Idaho at 773-74, 890 P.2d at 724-25.

¹³⁹ Barrett Affidavit, at Exhibit 1, p. 163.

¹⁴⁰ *Id.*

¹⁴¹ Bollinger Affidavit, at p. 5, ¶ 29.

¹⁴² Barrett Affidavit, at Exhibit 1, p. 165.

¹⁴³ Barrett Affidavit, at Exhibit 1, p. 166.

¹⁴⁴ *Id.*

¹⁴⁵ Barrett Affidavit, at Exhibit 1, pp. 166-7.

warning, is certainly upsetting, but not extreme. Being laid-off from long-term employment cannot be pleasant. For Bollinger, it was an emotional experience. Yet aside from short notice, an escort to her office, and pressure to leave quickly, Fall River took pains to velvet the termination hammer. Fall River management granted Bollinger a severance package, allowed her to claim unemployment, offered to give her a ride home, allowed her to return for a few additional items from her office, and wrote letters of recommendation on her behalf.

For these reasons, Bollinger has not shown conduct which amounts to extreme or outrageous behavior. Accordingly, Bollinger has not raised a material issue of fact as to her intentional infliction of emotional distress claim.

VI. CONCLUSIONS OF LAW

- (1) Bollinger an at-will employee of Fall River.
- (2) Bollinger did not plead facts which support her claim that Fall River terminated her in violation of public policy.
- (3) Bollinger has not plead facts which support her claim of breach of the covenant of good faith and fair dealing.
- (4) Bollinger has not stated a claim for negligent infliction of emotional distress.
- (5) Bollinger has not stated a claim for intentional infliction of emotional distress.

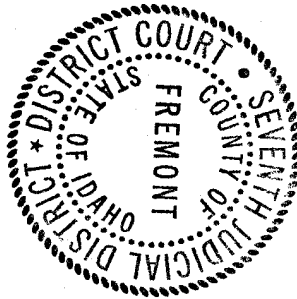
¹⁴⁶ Barrett Affidavit, at Exhibit 1, pp. 172-3.

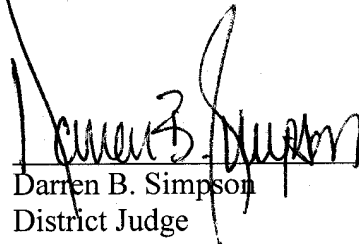
VII. ORDER

In light of the above findings of fact and conclusions of law, Fall River's Motion for Summary Judgment shall be **granted**. Bollinger shall take nothing by her lawsuit against Fall River.

IT IS SO ORDERED.

DATED this 14th day of July 2010.




Darren B. Simpson
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Order Granting Defendant's Motion for Summary Judgment was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by facsimile this 15th day of July 2010, to:

John M. Ohman, Esq.
COX, OHMAN &
BRANDSTETTER, CHARTERED
510 "D" Street
P.O. Box 51600
Idaho Falls, ID 83405-1600

U.S. Mail Courthouse Box Facsimile

Jerry R. Rigby, Esq.
RIGBY, ANDRUS & RIGBY,
CHTD.
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440

U.S. Mail Courthouse Box Facsimile

Jathan Janove, Esq.
James M. Barrett, Esq.
ATER WYNNE LLP
1331 N.W. Lovejoy Street, Suite
900
Portland, OR 97209-3280

U.S. Mail Courthouse Box Facsimile

ABBIE MACE, Clerk of the Court

By: *James M. Barrett*
Deputy Clerk

FILED IN CHAMBERS AT BLACKFOOT,
 BINGHAM COUNTY, IDAHO
July 15, 2010
 AT J. L. Tom
Darren B. Simpson
 DARREN B. SIMPSON
 DISTRICT JUDGE

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,)
)
 Plaintiff,)
)
 vs.)
)
 FALL RIVER RURAL ELECTRIC)
 COOPERATIVE, INC., an Idaho)
 corporation,)
)
 Defendant.)

Case No. CV-2010-36

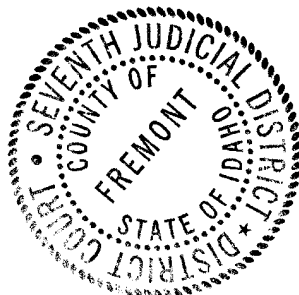
JUDGMENT

In light of the Order Granting Defendant's Motion for Summary Judgment, entered this day, entry of the Judgment is appropriate in the above-styled and numbered cause. Accordingly,

It is ordered that Plaintiff Suzette Bollinger shall take nothing by her lawsuit against Defendant Fall River Rural Electric Cooperative, Inc., an Idaho corporation.

IT IS SO ORDERED.

DATED this 15TH day of July 2010.



Darren B. Simpson
 Darren B. Simpson
 District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Judgment was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by facsimile this 15th day of July 2010, to:

John M. Ohman, Esq.
COX, OHMAN &
BRANDSTETTER, CHARTERED
510 "D" Street
P.O. Box 51600
Idaho Falls, ID 83405-1600

U.S. Mail

Courthouse Box

Facsimile

Jerry R. Rigby, Esq.
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CHTD.
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440

U.S. Mail

Courthouse Box

Facsimile

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900
Portland, OR 97209-3280

U.S. Mail

Courthouse Box

Facsimile

ABBIE MACE, Clerk of the Court

By: 

Deputy Clerk

DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed:

JUL 28 2010

ABBE MACE, CLERK
 By: EM Deputy Clerk

JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
 510 "D" STREET
 P.O. BOX 51600
 IDAHO FALLS, ID 83405-1600
 (208) 522-8606
 Fax: (208) 522-8618
 Idaho State Bar #1501

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
Corporation,

Defendant.

Case No. CV-10-36

**AFFIDAVIT OF GRACIE HARGRAVES-
LCPC**

STATE OF IDAHO)
 :ss.
 County of Bonneville)

GRACIE HARGRAVES, Affiant herein, hereby avers as follows:

1. I am of the age of majority and fully competent to testify to the facts stated herein.
2. I am a Licensed Clinical Professional Counselor engaged in my practice in Idaho Falls, Idaho.

AFFIDAVIT OF GRACIE HARGRAVES-LCPC - 1

S:\WORK\Clerk\Bollinger\Suzette\Affidavit Gracie Hargraves.doc

DOCUMENT
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ORIGINAL

3. I have a counselor relationship with Suzette Bollinger who contacted me for professional assistance on October 19, 2009.
4. At the time Ms. Bollinger presented to me, she was complaining of physical and emotional problems following her discharge from her employment.
5. Her physical problems were stated as:
 - A. Panic attacks with tightening chest pains;
 - B. Sleep disturbance due to nightmares;
 - C. Stomach pains;
 - D. Poor concentration;
 - E. Body aches;
 - F. Fatigue;
 - G. Changes in appetite, lost 25 pounds.
6. Based on my knowledge, experience and training, I can state that:
 - A. Ms. Bollinger advised that she did not experience any of the above physical problems prior to her termination from her employment at Fall River; However, Ms. Bollinger has been treated prior for symptoms of depression and anxiety. Terminated May 1, 2006.
 - B. The complaints for which she was referred to me, as set forth above, are the direct result of her job loss at Fall River;
 - C. As stated by Ms. Bollinger, each of said physical symptoms is the direct result of her termination;
 - D. I am not a Medical Doctor, however, emotions related to stress, anxiety and depression can be attributed to these physical symptoms;
 - E. Incident to my care and treatment of Ms. Bollinger, I have determined that she, indeed, suffers physically by reason of her symptoms resulting from said termination, as stated by Ms. Bollinger.
 - F. My assessment is more consistent as related to anxiety, depression and post traumatic stress symptoms.

AFFIDAVIT OF GRACIE HARGRAVES-LCPC - 2

S:\MICK\Gracie\Bollinger, Suzette\Affidavit Gracie Hargraves.wpd

DATED This 27th day of July, 2010.

Gracie Hargraves EdD LCPC
GRACIE HARGRAVES, LCPC

SUBSCRIBED AND SWORN to before me this 27th day of July, 2010.



NOTARY PUBLIC FOR IDAHO
Residing at: Idaho Falls
My commission expires: 11/15

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 28 day of July, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

Fremont County
Court Clerk
151 W. 1st N, Rm 15
St. Anthony, ID 83445

- By pre-paid post
- By hand delivery
- By facsimile transmission
624-4607

Honorable Gregory W. Moeller
Madison County
Court Clerk
P. O. Box 389
Rexburg, ID 83440

*Hon. Simpson
Benjamin
County
501 N. Maple
Blackfoot ID*

- By pre-paid post
- By hand delivery
- By facsimile transmission

*785-8057
#310
83221-1700*

James M. Barrett, Esq.
Jathan Janove, Esq.
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-2785
Fax: (503) 226-0079

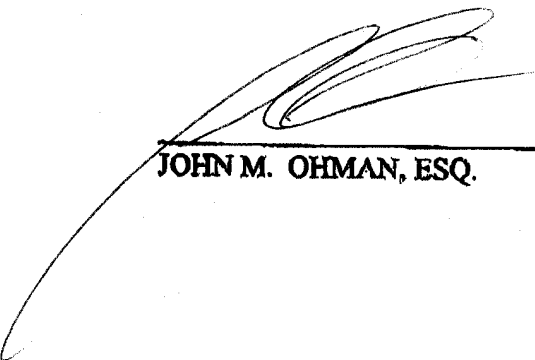
- By pre-paid post
- By hand delivery
- By facsimile transmission
- By courthouse box
- By electronic transmission
imb@aterwynne.com

AFFIDAVIT OF GRACIE HARGRAVES-LCPC - 3

S:\MICK\Clicat\DePiper.Suzette\Affidavit Gracie Hargraves.wpd

07-27-'10 14:03 FROM-Cox Ohman Brandstete 208-522-8618

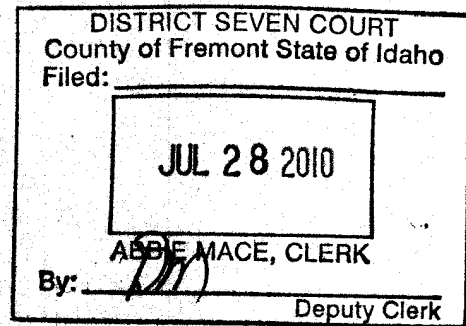
T-323 P0005/0005 F-553



JOHN M. OHMAN, ESQ.

AFFIDAVIT OF GRACIE HARGRAVES-LCPC - 4
S:\MICROFORMS\Bolinger,Suzette\Affidavit Gracie Hargraves.spd

JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Idaho State Bar #1501



ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
Corporation,

Defendant.

Case No. CV-10-36

MOTION FOR RECONSIDERATION

COMES NOW Plaintiff Suzette Bollinger, pursuant to IRCP 11(a)(2)(B) and hereby requests this Court's reconsideration of its Order Granting Defendant's Motion for Summary Judgment entered herein on July 15, 2010 on the grounds and for the reasons that the Court erred, on the facts and the law, as follows:

1. Finding that the termination of Plaintiff was a "layoff" attributable to an "economic downturn", as such is refuted by the Minutes from defendant's meetings of its Board

MOTION FOR RECONSIDERATION - 1

S:\MICK\Clients\Bollinger,Suzette\Motion for Reconsideration.wpd

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of Directors, filed herewith as Exhibit A to AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION FOR RECONSIDERATION within a sealed envelope pursuant to the within Protective Order.

2. Dismissing the plaintiff's claim of "negligent infliction of emotional distress" for lack of experts support of plaintiff's physical manifestations, as such support is provided for by the Affidavits of Helen Kenney, PA-C and Gracie Hargraves, LCPC filed contemporaneously herewith.

In presenting the within Motion, plaintiff does not waive, but instead expressly reserves for appeal her objections to the other findings and conclusions of the Court as set forth within its Order.

DATED this 27th day of July, 2010



JOHN M. OHMAN, ESQ.

MOTION FOR RECONSIDERATION - 2

S:\MICK\Clients\Bollinger.Suzette\Motion for Reconsideration 7-27-10.wpd

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 27 day of July, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

Fremont County
Court Clerk
151 W. 1st N, Rm 15
St. Anthony, ID 83445

By pre-paid post
 By hand delivery
 By facsimile transmission
624-4607

Honorable Darren Simpson
Bingham County District Court
501 N Maple, #310
Blackfoot, ID 83221-1700

By pre-paid post
 By hand delivery
 By facsimile transmission
785-8057

James M. Barrett, Esq.
Jathan Janove, Esq.
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-2785
Fax: (503) 226-0079

By pre-paid post
 By hand delivery
 By facsimile transmission
 By courthouse box
 By electronic transmission
jmb@aterwynne.com



JOHN M. OHMAN, ESQ.

MOTION FOR RECONSIDERATION - 3

S:\MICK\Clients\Bollinger.Suzette\Motion for Reconsideration.wpd

DISTRICT SEVEN COURT
County of Fremont State of Idaho
Filed:
JUL 28 2010
ABBIE MAZE, CLERK
By: *BM* Deputy Clerk

JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Idaho State Bar #1501

ATTORNEYS FOR PLAINTIFF

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

SUZETTE BOLLINGER,

Plaintiff,

vs.

**FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
Corporation.**

Defendant.

Case No. CV-10-36

AFFIDAVIT OF HELEN KENNEY, PA-C.

STATE OF IDAHO)
 :ss.
County of Bonneville)

HELEN KENNEY, Affiant herein, hereby avers as follows:

- 1. I am of the age of majority and fully competent to testify to the facts stated herein.
- 2. I am a licensed Physician Assistant engaged in my practice in Idaho Falls, Idaho.
- 3. I have a physician assistant-patient relationship with Suzette Bollinger who first

AFFIDAVIT OF HELEN KENNEY, P.A.C. - 1
\\BMC\CC\clerk\80\logos\SuzetteAffidavit Helen Kenney.wpd

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DOCUMENT
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contacted me for professional assistance on 1/15/2010, 2009.

4. At the time Ms. Bollinger presented to me, she was complaining of

~~Insomnia, concentration difficulty, weight~~

~~⊕ she originally thought this was a thyroid~~

~~abnormality. Since some of these symptoms are similar but lab studies indicate hwb FT4 and FT3 were normal.~~

5. Ms. Bollinger was referred to me by Gracie Hargraves, known by me to be a counselor also providing professional services to Ms. Bollinger.

6. Based on my knowledge, experience and training, I can state to a reasonable medical probability that:

- A. Ms. Bollinger did not experience any of the above physical problems prior to her termination from her employment at Fall River;
- B. The complaints for which she was referred to me, as set forth above, are the direct result of her job loss at Fall River;
- C. Each of said physical symptoms in the direct result of her termination;
- D. There is no other explanation of which I am aware to explain said physical symptoms;
- E. Incident to my care and treatment of Ms. Bollinger, I have determined that she, indeed, suffers physically by reason of her symptoms resulting from said termination.

DATED This 27th day of July, 2010.

Helen Kenney
HELEN KENNEY, P.A.C.

AFFIDAVIT OF HELEN KENNEY, P.A.C. - 2

S:\MICRO\KatieBollinger\Barron\Affidavit Helen Kenney.wpd

SUBSCRIBED AND SWORN to before me this 27th day of July, 2010.



[Signature]
NOTARY PUBLIC FOR IDAHO

Residing at: Idaho Falls

My commission expires: 10/18

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 27th day of July, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

Fremont County
Court Clerk
151 W. 1st N, Rm 15
St. Anthony, ID 83445

- By pre-paid post
 - By hand delivery
 - By facsimile transmission
- 624-4607

~~Honorable Gregory W. Moeller
Madison County
Court Clerk
P. O. Box 389
Rexburg, ID 83440~~
Honorable Darren Simpson
Bingham County District Court
501 N Maple, #310
Blackfoot, ID 83201-1700

- By pre-paid post
 - By hand delivery
 - By facsimile transmission
- 356-5425

James M. Barrett, Esq.
Jathan Janove, Esq.
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-2785
Fax: (503) 226-0079

- By pre-paid post
 - By hand delivery
 - By facsimile transmission
 - By courthouse box
 - By electronic transmission
- jmb@aterwynne.com

[Signature]
JOHN M. OHMAN, ESQ.

AFFIDAVIT OF HELEN KENNEY, P.A.C. - 3

\\MICRO\charis\Bollinger_Suzette\Affidavit Helen Kenney.wpd

DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed: _____
 JUL 28 2010
 ABBIE MACE, CLERK
 By: DM Deputy Clerk

JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Idaho State Bar #1501

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
 COOPERATIVE, INC., an Idaho
 Corporation,

Defendant.

Case No. CV-10-36

**AFFIDAVIT OF COUNSEL IN SUPPORT
 OF MOTION FOR RECONSIDERATION**

STATE OF IDAHO)
 :ss.
 County of Bonneville)

JOHN M. OHMAN, attorney for Plaintiff, affirms as follows:

1. I am of the age of majority and well able and competent to testify to the facts stated herein.
2. I have read, and am familiar with the ORDER GRANTING PLAINTIFF'S

AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION FOR RECONSIDERATION

S:\MICK\Clients\Bollinger.Suzette\Affidavit of Counsel.wpd

DOCUMENT
 SCANNED

ORIGINAL

MOTION FOR SUMMARY JUDGMENT dismissing Plaintiff's Complaint.

3. Therein, this Court concludes that Plaintiff was "laid off" because of an "economic downturn" at Fall River (page 20, paragraph D).

4. Provided herewith as Exhibit A (but in a sealed envelope marked "Exhibits to Affidavit of Counsel in Support of Motion for Reconsideration") are true and correct copies of the Minutes of the Board of Directors of Fall River for these dates: December 22, 2008 (Bate Stamp 1286-1291); January 26, 2009 (1292-1298); February 23, 2009 (Bate Stamp 1299-1306); March 30, 2009 (Bate Stamp 1307-1315); April 27, 2009 (Bate Stamp 1316-1323); May 26, 2009 (Bate Stamp 1327-1336); June 22, 2009 (Bate Stamp 1337-1339); June 27, 2009 (Bate Stamp 1340-1348); June 30, 2009 (Bate Stamp 1349-1357).

5. None of these exhibits discuss specifically, or suggest inferentially, that Fall River is in any way experiencing any economic downturn or financial problems.

6. In its decision, the Court also notes the absence of any information beyond Ms. Bollinger's deposition testimony—that she has had physical manifestations/symptoms as a result of her emotional stress caused by her termination of employment (page 22, final paragraph).

7. Filed in support hereof are Affidavits of Helen Kenney, PA-C and Gracie Hargraves, LCPC, wherein such physical manifestations are confirmed.

DATED This 27 day of July, 2010.

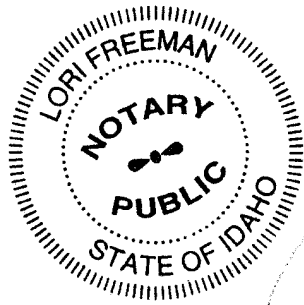


JOHN M. OHMAN, ESQ.

AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION FOR RECONSIDERATION - 2

S:\MICK\Clients\Bollinger.Suzette\Affidavit of Counsel.wpd

SUBSCRIBED AND SWORN to before me this 27th day of July, 2010.



[Handwritten Signature]

NOTARY PUBLIC FOR IDAHO
Residing at: Bozart, Idaho
My commission expires: 02-18-2016

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 27th day of July, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

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624-4607

Honorable Darren Simpson
Bingham County District Court
501 N Maple, #310
Blackfoot, ID 83221-1700

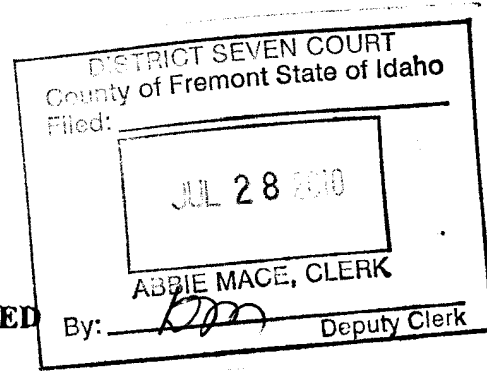
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785-8057

James M. Barrett, Esq.
Jathan Janove, Esq.
Ater Wynne LLP
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Fax: (503) 226-0079

- By pre-paid post
- By hand delivery
- By facsimile transmission
- By courthouse box
- By electronic transmission
jmb@aterwynne.com

[Handwritten Signature]

JOHN M. OHMAN, ESQ.



JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Idaho State Bar #1501

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC., an Idaho Corporation,

Defendants.

Case No. CV-10-36

NOTICE OF TELEPHONIC HEARING

TO: Falls River Rural Electric Cooperative, Inc.; Bryan Case; Larry Hamilton; and their attorney James M. Barrett, Esq.

PLEASE TAKE NOTICE That on August 20, 2010, at 10:00 a.m. via telephone in the courtroom of the above-entitled Court, in Rigby, Idaho, Plaintiff will call up for hearing that certain **MOTION FOR RECONSIDERATION** previously filed.

If for any reason defendant's counsel prefers that the hearing be had in open court, rather than by telephone, plaintiff's counsel agrees to accommodate such preference and will do an

NOTICE OF TELEPHONIC HEARING - 1
S:\WICK\Cheer\Bollinger.Suzette\Notice of Telephonic Hearing 7-27-10.wpd

Amended Notice of Hearing for a time convenient to court and counsel.

DATED this 28th day of July, 2010.



JOHN M. OHMAN, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 28th day of July, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

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624-4607

Honorable Darren Simpson
Bingham County District Court
501 N Maple, #310
Blackfoot, ID 83221-1700

By pre-paid post
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785-8057

James M. Barrett, Esq.
Jathan Janove, Esq.
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-2785
Fax: (503) 226-0079

By pre-paid post
 By hand delivery
 By facsimile transmission
 By courthouse box
 By electronic transmission
jmb@aterwynne.com



JOHN M. OHMAN, ESQ.

NOTICE OF TELEPHONIC HEARING - 2

S:\MICK\Clinta\Bollinger, Suzette\Notice of Telephonic Hearing 7-27-10.wpd

DISTRICT SEVEN COURT
County of Fremont State of Idaho
Filed:
JUL 29 2010
ASHIE MACE, CLERK
By: *Am* Deputy Clerk

Jerry R. Rigby
Email: jrigby@rex-law.com
RIGBY, ANDRUS & RIGBY, CHTD.
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440
Telephone: 208/356-3633
ISB No. 2470

Jathan Janove
E-mail: jj@aterwynne.com
James Barrett, OSB No. 011991 (*Admitted pro hac vice*)
E-mail: jmb@aterwynne.com
ATER WYNNE LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-3280
Tel: 503/226-1191; Fax: 503/226-0079
ISB No. 6969

Attorneys for Fall River Rural Electric Cooperative, Inc.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
corporation,

Defendant.

Case No. CV-10-36

**DEFENDANT'S MEMORANDUM OF
COSTS**

Pursuant to IRCP 54(d)

DEFENDANT'S MEMORANDUM OF COSTS - Page 1

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191
286

991583/1/SF/103889-0003

Judgment having been entered in the above entitled action on July 15, 2010, against Plaintiff Suzette Bollinger, Defendant Fall River Rural Electric Cooperative, Inc. ("Fall River") seeks the following costs pursuant to Rule 54(d) of the Idaho Rules of Civil Procedure:

1. Fees for Service of Pleadings or Documents in the Action (Rule 54(d)(C)(1)):

Service of documents to John M. Ohman, U.P.S. Corp., Feb. 25, 2010	\$45.33
Service of documents to John M. Ohman, U.P.S. Corp., May 6, 2010	\$38.39
Service of documents to John M. Ohman, U.P.S. Corp., May 7, 2010	\$29.93
Service of documents to District Court, U.P.S. Corp., May 18, 2010	\$13.72
Service of documents to Judge Simpson, U.P.S. Corp., May 18, 2010	\$10.17

2. Charges for Reporting and Transcribing Plaintiff's Deposition

(Rule 54(d)(C)(9&10):

Deposition reporting and transcribing, T&T Reporting, May 6, 2010	\$905.45
---	----------

TOTAL: **\$1,042.99**

DATED this 26th day of July, 2010.

ATER WYNNE LLP

By: 

Jathan Janove, ISB No. 6969

James M. Barrett, OSB No. 011991

(Admitted pro hac vice)

Attorneys for Defendant Fall River Rural Electric
Cooperative, Inc.

DEFENDANT'S MEMORANDUM OF COSTS - Page 2

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191
287

991583/1/SF/103889-0003

CERTIFICATE OF SERVICE

I hereby certify that served the foregoing **DEFENDANT'S MEMORANDUM OF**

COSTS on the following:

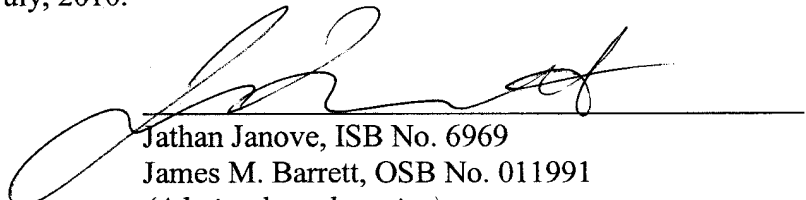
John M. Ohman
E-mail: cobjmo@ida.net
Cox, Ohman & Brandstetter, Chartered
510 "D" Street
Idaho Falls, ID 83405-1600
Attorney for Plaintiff

by electronic transmission and U.S. First-Class Mail a true and correct copy thereof to said parties on the date stated below.

In addition, a courtesy copy of this document was sent by U.S. First-Class Mail to the following on the date stated below:

The Honorable Darren B. Simpson
District Judge
501 North Maple, #205
Blackfoot, ID 83221

DATED this 26th day of July, 2010.



Jathan Janove, ISB No. 6969
James M. Barrett, OSB No. 011991
(Admitted pro hac vice)
Attorneys for Defendant Fall River Rural Electric
Cooperative, Inc.

CERTIFICATE OF SERVICE

DISTRICT SEVEN COURT
County of Fremont State of Idaho
Filed:
JUL 29 2010
ANNE MACE, CLERK
By: *DM* Deputy Clerk

Jerry R. Rigby
Email: jrigby@rex-law.com
RIGBY, ANDRUS & RIGBY, CHTD.
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440
Telephone: 208/356-3633
ISB No. 2470

Jathan Janove
E-mail: jj@aterwynne.com
James Barrett, OSB No. 011991 (*Admitted pro hac vice*)
E-mail: jmb@aterwynne.com
ATER WYNNE LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-3280
Tel: 503/226-1191; Fax: 503/226-0079
ISB No. 6969

Attorneys for Fall River Rural Electric Cooperative, Inc.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
corporation,

Defendant.

Case No. CV-10-36

**AFFIDAVIT OF JAMES M. BARRETT IN
SUPPORT OF DEFENDANT'S
MEMORANDUM OF COSTS**

Pursuant to IRCP 54(d)

DOCUMENT
SCANNED

**AFFIDAVIT OF JAMES M. BARRETT IN SUPPORT OF
DEFENDANT'S MEMORANDUM OF COSTS - Page 1**

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

992108/1/SF/103889-0003

STATE OF OREGON)
) ss.
County of Multnomah)

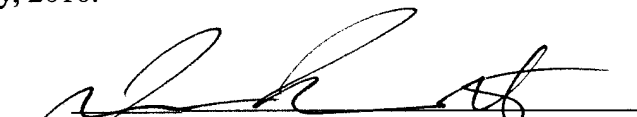
I, James M. Barrett, being duly sworn, depose and affirm as follows:

1. I am an attorney at Ater Wynne LLP residing in Portland, Oregon, and I represent Defendant Fall River Rural Electric Cooperative, Inc. ("Fall River Electric") in the above-captioned matter. I make this affidavit in support of **DEFENDANT'S MEMORANDUM OF COSTS**.

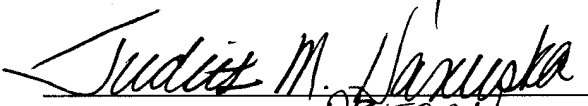
2. I declare that the costs itemized in **DEFENDANT'S MEMORANDUM OF COSTS** are true and accurate costs paid by Defendant in the above-referenced matter.

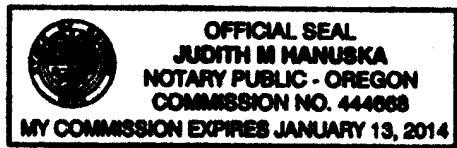
I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 26th day of July, 2010.


James M. Barrett

SUBSCRIBED AND SWORN TO before me this 26 day of JULY, 2010.


Notary Public for OREGON
My Commission Expires: 01/13/2014



CERTIFICATE OF SERVICE

I hereby certify that served the foregoing **AFFIDAVIT OF JAMES M. BARRETT IN SUPPORT OF DEFENDANT'S MEMORANDUM OF COSTS** on the following:

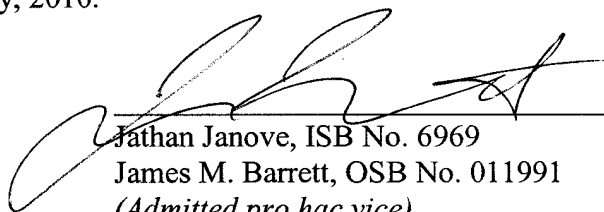
John M. Ohman
E-mail: cobjmo@ida.net
Cox, Ohman & Brandstetter, Chartered
510 "D" Street
Idaho Falls, ID 83405-1600
Attorney for Plaintiff

by electronic transmission and U.S. First-Class Mail a true and correct copy thereof to said parties on the date stated below.

In addition, a courtesy copy of this document was sent by U.S. First-Class Mail to the following on the date stated below:

The Honorable Darren B. Simpson
District Judge
501 North Maple, #205
Blackfoot, ID 83221

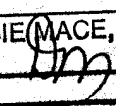
DATED this 26th day of July, 2010.



Nathan Janove, ISB No. 6969
James M. Barrett, OSB No. 011991
(Admitted pro hac vice)
Attorneys for Defendant Fall River Rural Electric
Cooperative, Inc.

CERTIFICATE OF SERVICE

JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Idaho State Bar #1501

DISTRICT SEVEN COURT	
County of Fremont State of Idaho	
Filed:	
AUG - 4 2010	
ABBIE MACE, CLERK	
By: 	Deputy Clerk

ATTORNEYS FOR PLAINTIFF

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

SUZETTE BOLLINGER,

Plaintiff,

vs.

**FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
Corporation,**

Defendants.

Case No. CV-10-36

NOTICE OF TELEPHONIC HEARING

TO: Falls River Rural Electric Cooperative, Inc., and its attorney James M. Barrett, Esq.

PLEASE TAKE NOTICE That on August 20, 2010, at 10:00 a.m. via telephone in the courtroom of the above-entitled Court, in Rigby, Idaho, Plaintiff will call up for hearing that certain **MOTION TO DISALLOW COSTS** previously filed.

If for any reason defendant's counsel prefers that the hearing be had in open court, rather than by telephone, plaintiff's counsel agrees to accommodate such preference and will do an Amended Notice of Hearing for a time convenient to court and counsel.

NOTICE OF TELEPHONIC HEARING - 1
S:\MICK\Clients\Bollinger, Suzette\Notice of Telephonic Hearing 8-04-10.wpd

**DOCUMENT
SCANNED**

DATED this 4th day of August, 2010.



JOHN M. OHMAN, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 4th day of August, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

Fremont County
Court Clerk
151 W. 1st N, Rm 15
St. Anthony, ID 83445

[] By pre-paid post
[] By hand delivery
 By facsimile transmission
624-4607

Honorable Darren Simpson
Bingham County District Court
501 N Maple, #310
Blackfoot, ID 83221-1700

[] By pre-paid post
 By hand delivery
[] By facsimile transmission
785-8057

James M. Barrett, Esq.
Jathan Janove, Esq.
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-2785
Fax: (503) 226-0079

[] By pre-paid post
 By hand delivery
[] By facsimile transmission
 By courthouse box
[] By electronic transmission
jmb@aterwynne.com



JOHN M. OHMAN, ESQ.

NOTICE OF TELEPHONIC HEARING - 2

S:\MICK\Clients\Bollinger, Suzanne\Notice of Telephonic Hearing 8-04-10.wpd

DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed: _____
 AUG - 4 2010
 ABBIE MACE, CLERK
 By: JMM
 Deputy Clerk

JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Idaho State Bar #1501

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC COOPERATIVE, INC., an Idaho Corporation,

Defendant.

Case No. CV-10-36

MOTION TO DISALLOW COSTS

TO: Falls River Rural Electric Cooperative, Inc., and its attorney, James M. Barrett, Esq.

Pursuant to IRCP 54(d)6, Plaintiff Suzette Bollinger, hereby objects to DEFENDANT'S

MEMORANDUM OF COSTS filed herein as follows:

(Note: For convenience of the Court the following excerpts are taken from said

Memorandum)

MOTION TO DISALLOW COSTS - 1

S:\MICK\Clients\Bollinger, Suzette\Motion to Disallow Costs 8-03-10.wpd

A. The following costs are discretionary and should not be allowed.

Date	Descriptions	Amount
2/25/2010	Service of documents to John M. Ohman, U.P.S. Corp.	\$45.33
5/06/2010	Service of documents to John M. Ohman, U.P.S. Corp.	\$38.39
5/07/2010	Service of documents to John M. Ohman, U.P.S. Corp.	\$29.93
5/18/2010	Service of documents to District Court, U.P.S. Corp.	\$13.72
5/18/2010	Service of documents to Judge Simpson, U.P.S. Corp.	\$10.17

DATED this 3rd day of August, 2010



JOHN M. OHMAN, ESQ.

MOTION TO DISALLOW COSTS - 2

S:\MICK\clients\Bollinger,Suzette\Motion to Disallow Costs 8-03-10.wpd

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 3rd day of August, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

Fremont County
Court Clerk
151 W. 1st N, Rm 15
St. Anthony, ID 83445

- By pre-paid post
- By hand delivery
- By facsimile transmission
624-4607

Honorable Darren Simpson
Bingham County District Court
501 N Maple, #310
Blackfoot, ID 83221-1700

- By pre-paid post
- By hand delivery
- By facsimile transmission
785-8057

James M. Barrett, Esq.
Jathan Janove, Esq.
Ater Wynne LLP
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Fax: (503) 226-0079

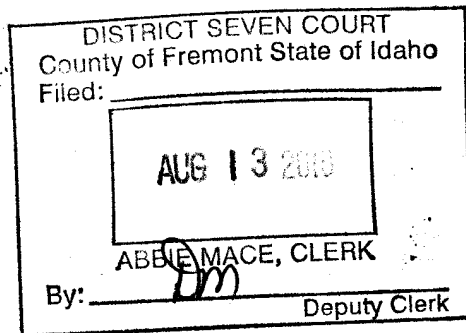
- By pre-paid post
- By hand delivery
- By facsimile transmission
- By courthouse box
- By electronic transmission
jmb@aterwynne.com



JOHN M. OHMAN, ESQ.

MOTION TO DISALLOW COSTS - 3

S:\MICK\Clients\Bollinger.Suzette\Motion to Disallow Costs 8-03-10.wpd



Jerry R. Rigby
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RIGBY, ANDRUS & RIGBY, CHTD.
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James M. Barrett (*pro hac vice application pending*)
Email: jmb@aterwynne.com
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Portland, OR 97209-3280
(503) 226-1191
ISB No. 6969

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho corporation,

Defendant.

Case No. CV-10-36

**SUPPLEMENTAL AFFIDAVIT OF
BRYAN CASE IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

SUPPLEMENTAL AFFIDAVIT OF BRYAN CASE - Page 1

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

999617/1/JMB/103889-0003

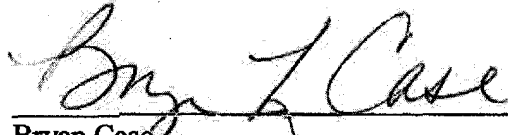
STATE OF IDAHO)
) ss.
County of Madison)

I, Bryan Case, swear and affirm as follows:

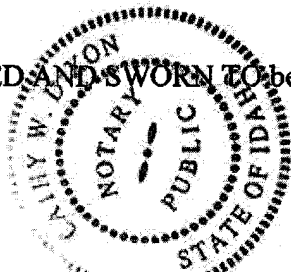
1. I reside in Rexburg, Idaho. I am employed as the General Manager at Fall River Rural Electric Cooperative, Inc. ("Fall River Electric" or the "Cooperative"). I make this affidavit in support of Defendant's Opposition to Plaintiff's Motion for Reconsideration in the above-captioned matter. I have personal knowledge of the matters set forth herein and am competent to testify to them.

2. I had many conversations with the Cooperative's Board of Directors in 2009 regarding the financial impact of the recession and how the Cooperative could cut costs. As I previously testified in my affidavit in support of the Cooperative's Motion for Summary Judgment, the Board approved an early retirement package in May 2009 to provide an early retirement incentive for workers nearing retirement. The package was offered to 10 employees. Four employees initially accepted the offer with a fifth accepting the offer at a later date. As a result, the Cooperative faced the need for a layoff or Reduction in Force.

3. Attached as EXHIBIT 1 is a true and correct copy of excerpts from a confidential memorandum that I drafted to the Board of Directors explaining the basis for the Reduction in Force. The Board of Directors reviewed this memorandum at its July 2009 meeting and approved the Reduction in Force at that time.


Bryan Case

SUBSCRIBED AND SWORN TO before me this 11 day of August, 2010.




Notary Public for Fall River Electric

My Commission Expires: 8-15-2015

SUPPLEMENTAL AFFIDAVIT OF BRYAN CASE - Page 2

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

999617/1/JMB/103889-0003

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing SUPPLEMENTAL AFFIDAVIT OF BRYAN CASE IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION on the following:

John M. Ohman
cobjmo@ida.net
Cox, Ohman & Brandstetter, Chartered
510 "D" Street
Idaho Falls, ID 83405-1600

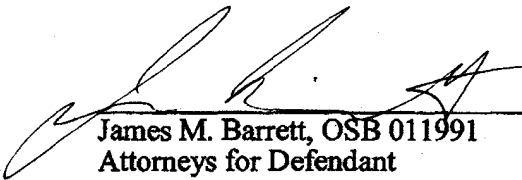
Attorney for Plaintiff

by electronic transmission and U.S. First-Class Mail a true and correct copy thereof to said parties on the date stated below.

In addition, a courtesy copy of this document was sent by U.S. First-Class Mail to the following on the date stated below:

The Honorable Darren B. Simpson
District Judge
501 North Maple, #205
Blackfoot, ID 83221


DATED this 12th day of August, 2010.


James M. Barrett, OSB 011991
Attorneys for Defendant

CERTIFICATE OF SERVICE

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

999617/1/JMB/103889-0003

DISTRICT SEVEN COURT
County of Fremont State of Idaho
Filed:
AUG 13 2010
ABBIE MACE, CLERK
By:  Deputy Clerk

Jerry R. Rigby
Email: jrigby@rex-law.com
RIGBY, ANDRUS & RIGBY, CHTD.
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440
(208) 356-3633
ISB No. 2470

Jathan Janove
Email: jj@aterwynne.com
James M. Barrett (*pro hac vice application pending*)
Email: jmb@aterwynne.com
ATER WYNNE LLP
1331 N.W. Lovejoy Street, Suite 900
Portland, OR 97209-3280
(503) 226-1191
ISB No. 6969

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

v.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho corporation,

Defendant.

Case No. CV-10-36

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

DOCUMENT
SCANNED

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION
- Page 1

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191

999603/1/JMB/103889-0003

Plaintiff Suzette Bollinger (“Bollinger”) moves for reconsideration of the Court’s July 15, 2010 Order Granting Defendant’s Motion for Summary Judgment. She submits selected minutes of the Board of Directors of Fall River and the affidavits of two medical professionals that, in her view, rebut the Court’s conclusions that (1) her termination was a layoff attributable to an “economic downturn”; and (2) she suffered no physical manifestations of harm as a result of her termination from Fall River. The Court should deny Bollinger’s motion.

A. The Board of Directors’ Minutes Do Not Create an Issue of Fact.

In its Order, the Court concluded that the evidence suggested that Bollinger “was laid off due to the downturn in the economy,” citing Fall River’s early retirement offer to eligible employees, the other four layoffs which occurred simultaneously to Bollinger’s, and the assumption of Bollinger’s duties by the Operations Manager (thus eliminating Bollinger’s position). Order at 19-20.

Bollinger argues, however, that the minutes of the meetings of the Fall River Board of Directors that preceded her termination do not “discuss specifically, or suggest inferentially, that Fall River is in any way experiencing any economic downturn or financial problems.” Accordingly, Bollinger suggests that there is an issue of fact as to whether Fall River’s stated reason for terminating her was a pretext for retaliation.

As a threshold matter, Bollinger ignores that the minutes refer generally to discussions of key documents, most notably budgets showing Fall River’s financial performance, that are not part of the record. Even so, Bollinger incorrectly characterizes the minutes, which clearly *do* show that Fall River was being affected by, and was trying to cope with, the economic downturn. For example:

- At the January 26, 2009 Board meeting, the “2009 Proposed Budget packet was distributed and discussed.” “The current economic situation was discussed and how it might affect power usages.” (Bates No. 1293.) “Jay Hanson made a motion to approve the 2009 capital and operating budget with the understanding that management utilize discretion to cut costs and be conservative to save money and unnecessary spending.” (Bates No. 1294.) In discussing strategic planning for 2009, Bryan Case “commented on some items that he is already working on such as . . . keeping costs down.” (Bates No. 1297.)

- At the February 23, 2009 Board meeting, Bryan Case discussed the affects of the “economic recession” and unplanned expenses that were causing some areas to be “over budget,” and the Board commented on the “need to review [the budget] regularly to find areas to cut back on expenses.” (Bates No. 1300.)

- Although Bollinger did not include it with the minutes, at the July 27, 2009 Board meeting prior to Bollinger’s termination, Bryan Case submitted a detailed analysis of the Reduction in Force (RIF) to the Board of Directors, excerpts of which are attached to the Supplemental Affidavit of Bryan Case as Confidential Exhibit 1.

Lastly, Bollinger does not dispute the fact that Fall River implemented an early retirement program in early 2009, and, when that did not sufficiently reduce costs, the Cooperative permanently eliminated her position and terminated her employment as part of a wider layoff that affected four other employees. The Court correctly found that this was further undisputed evidence that Bollinger was terminated because of the economic downturn. Bollinger has produced no evidence, including the Board minutes, from which a rational contrary inference of retaliatory discharge could be drawn.

DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION FOR RECONSIDERATION

- Page 3

B. The Medical Professional Affidavits Do Not Create An Issue of Fact.

There are several significant problems with Bollinger's introduction of the affidavits of Helen Kenney, a Physician Assistant, and Gracie Hargraves, a Clinical Professional Counselor, both of whom testify that Bollinger suffers from insomnia and other physical symptoms caused by her termination from Fall River.

First, even if the Court credited the testimony of both medical professionals, it would not change the outcome, because the Court dismissed Bollinger's negligent infliction of emotional distress claim on the basis of Bollinger's failure to establish that Fall River breached a recognized legal duty to her. *See* Order at 21 (citing *Akers v. Mortensen*, 147 Idaho 39, 48, 205 P.3d 1175, 1184 (2009)). That conclusion is unaffected by the testimony of Kenney and Hargraves, and, therefore, the affidavits do not support a reconsideration of the Court's Order.

Second, there is insufficient evidence in the affidavits of Kenney and Hargraves to establish that they are competent to give opinion testimony as to the cause of Bollinger's physical symptoms. *See* Rule 56(e) (affidavit must "show affirmatively that the affiant is competent to testify to the matters stated therein"). Notably, neither Kenney nor Hargraves are doctors with a medical degree, and neither identify the extent or nature of her experience and training. For example, the Court is not told where they received training, how long they have practiced in their field, or whether they have previously qualified as an expert. An affidavit purporting to offer expert opinion lacks adequate foundation "where [it] does not set out the requisite facts necessary to rule on any expert affiant's qualifications." *R.G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 416, 797 P.2d 117, 124 (1990).

Third, even assuming both Kenney and Hargraves are competent to render an opinion on the cause of Bollinger's physical symptoms, neither identify the basis for that opinion. *See R.G. Nelson, A.I.A., supra*, 118 Idaho at 416 ("A supporting affidavit is inadmissible to show the presence of a genuine issue of material fact if it merely states conclusions and does not set out the underlying facts."). Indeed, both professionals, (neither of whom observed or treated Bollinger before her termination), appear to rely solely on the timing of Bollinger's symptoms, (as reported to them by Bollinger), to conclude that her symptoms are a result of her termination – in other words, each essentially testify that Bollinger's symptoms appeared after her termination and therefore the termination was the cause. That is an improper use of a well-known "logical fallacy," *post hoc, ergo propter hoc*, or "after this and therefore because of it." *See, e.g., Young v. Hickory Business Furniture*, 538 SE 2d 912, 916 (N.C. 2000) ("In a case where the threshold question is the cause of a controversial medical condition, the maxim of "*post hoc, ergo propter hoc*" is not competent evidence of causation."). *See also Spur Products Corp. v. Stoel Rives LLP*, 142 Idaho 41, 122 P.3d 300, 307(2005) (McKee, J., dissenting) (describing the logical fallacy). Use of the *post hoc, ergo propter hoc* theory of causation is especially troubling here, in light of Hargraves' knowledge that Bollinger had been treated for symptoms of depression and anxiety prior to her termination. *See Hargraves Aff.* ¶ 6.A.

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DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION

- Page 5

ATER WYNNE LLP
1331 NW LOVEJOY STREET, SUITE 900
PORTLAND, OR 97209-3280
(503) 226-1191
304

999603/1/JMB/103889-0003

CONCLUSION

For the foregoing reasons, Fall River Electric respectfully requests that the Court deny Plaintiff's motion for reconsideration.

DATED this 12th day of August, 2010.

ATER WYNNE LLP

By:  

Jathan Janove, ISB #6969

James M. Barrett, OSB #011991

(Admitted pro hac vice)

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION** on the following:

John M. Ohman
cobjmo@ida.net
Cox, Ohman & Brandstetter, Chartered
510 "D" Street
Idaho Falls, ID 83405-1600

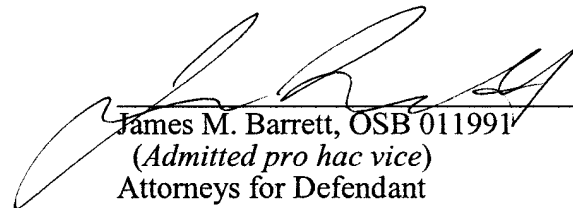
Attorney for Plaintiff

by electronic transmission and U.S. First-Class Mail a true and correct copy thereof to said parties on the date stated below.

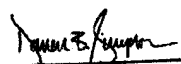
In addition, a courtesy copy of this document was sent by U.S. First-Class Mail to the following on the date stated below:

The Honorable Darren B. Simpson
District Judge
501 North Maple, #205
Blackfoot, ID 83221

DATED this 12th day of August, 2010.


James M. Barrett, OSB 011991
(Admitted pro hac vice)
Attorneys for Defendant

CERTIFICATE OF SERVICE

**FILED IN CHAMBERS AT BLACKFOOT,
 BINGHAM COUNTY, IDAHO**
October 12, 2010
AT 4:35 pm

**DARREN B. SIMPSON
 DISTRICT JUDGE**

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

SUZETTE BOLLINGER,)	
)	Case No. CV-2010-36
Plaintiff,)	
)	ORDER DENYING
vs.)	PLAINTIFFS' MOTION FOR
)	RECONSIDERATION
FALL RIVER RURAL ELECTRIC)	
COOPERATIVE, INC., an Idaho)	
corporation,)	
)	
<u>Defendant.</u>)	

Plaintiff Suzette Bollinger (hereinafter "Bollinger") filed a Motion for Reconsideration¹ of this Court's *Order Granting Defendant's Motion for Summary Judgment*, entered July 15, 2010.² Defendant Fall River Rural Electric Cooperative, Inc., an Idaho corporation (hereinafter "Fall River"), filed its opposition thereto.³

¹ Motion for Reconsideration, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed July 28, 2010) (hereinafter "**Bollinger's Motion**").

² Order Granting Defendant's Motion for Summary Judgment, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed July 15, 2010) (hereinafter the "**Summary Judgment Order**").

³ Defendant's Opposition to Plaintiff's Motion for Reconsideration, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed August 13, 2010) (hereinafter "**Fall River's Opposition**").

Based upon the parties' pleadings, the record, and the relevant authorities, Bollinger's Motion shall be denied.

Bollinger contends that this Court erred in concluding that Bollinger's termination from Fall River was a layoff, attributable to an economic downturn.⁴ Bollinger also takes the position that the dismissal of Bollinger's "negligent infliction of emotional distress" claim was error in light of affidavits submitted by Bollinger in support of her Motion.⁵

Fall River responds that the Board of Directors' Minutes (hereinafter the "Minutes") submitted by Bollinger do not raise a material issue of fact as to the reason behind Bollinger's termination.⁶ Fall Rivers also urges that the affidavits submitted by Bollinger do not create a material issue of fact as to Bollinger's negligent infliction of emotion distress claim.⁷

Idaho Rule of Civil Procedure 11(a)(2)(B), which provides for motions for reconsideration, reads in part:

A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days from the entry of final judgment.

A party requesting reconsideration is permitted to present new evidence, but is not required to do so.⁸ The burden of proof on a motion for reconsideration is upon the requesting party.⁹

⁴ Bollinger's Motion, at p. 1.

⁵ Bollinger's Motion, at p. 2.

⁶ Fall River's Opposition, at pp. 2-3.

⁷ Fall River's Opposition, at pp. 4-5.

⁸ *Johnson v. Lambros*, 143 Idaho 468, 472-3, 147 P.3d 100, 104-5 (Ct. App. 2006).

⁹ *Johnson v. Lambros*, 143 Idaho at 472, 147 P.3d at 104.

Considerable discretion whether to grant or deny a motion for reconsideration is afforded to a trial court.¹⁰ A trial court's discretion is examined under the discretionary test: (a) whether the trial court correctly perceived the issue as one of discretion, (b) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the consideration of an award, and (c) whether the trial court reached its decision by an exercise of reason.¹¹

In its *Summary Judgment Order*, this Court held that Bollinger was an at-will employee of Fall River, subject to discharge without cause.¹² In the alternative, this Court found that Bollinger was not terminated for any reason other than as part of a lay-off due to the downturn in the economy.¹³

With her Motion, Bollinger submits the Minutes for December 22, 2008, January 26, 2009, February 23, 2009, March 30, 2009, April 27, 2009, June 22, 2009, June 27, 2009, and June 30, 2009.¹⁴ (Bollinger was terminated from her position with Fall River on July 28, 2009.)¹⁵ Bollinger argues that none of the Minutes suggest inferentially or discuss specifically that Fall River was experiencing any economic or financial problems.¹⁶

Bollinger submitted the Minutes under seal, therefore no specific details shall be mentioned, nor shall particular entries be cited. However, the Minutes have numerous references to the economic downturn, potential stimulus money, cost-cutting, curbing

¹⁰ *Jordan v. Beeks*, 135 Idaho 586, 592, 21 P.3d 908, 914 (2001).

¹¹ *Sun Valley Shopping Center v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

¹² *Summary Judgment Order*, at pp. 12-14.

¹³ *Summary Judgment Order*, at pp. 14-16.

¹⁴ Affidavit of Counsel in Support of Motion for Reconsideration, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed July 28, 2010), at Exhibit A.

¹⁵ *Summary Judgment Order*, at p. 6.

¹⁶ Ohman Affidavit, at p. 2, ¶ 6.

unnecessary spending, rate increases, postponement of a building project, interest rate expense increases, efficiency increases, and an investigation into administrative costs. These references infer that Fall River was indeed experiencing economic problems at or around the time of Bollinger's termination.

Furthermore, the issue of "layoff due to economic downturn" only becomes relevant if this Court's finding, that Bollinger was an at-will employee, is in error. Bollinger does not contest the "at-will" status in her Motion.

Accordingly, the *Summary Judgment Order* shall not be altered as it pertains to the alternative finding that Bollinger's termination was the result of an economic downturn.

In addition, in the *Summary Judgment Order*, this Court found that Bollinger failed to support her negligent infliction of emotional distress claim with proof of Fall River's breach of a duty.¹⁷ Moreover, Bollinger failed to offer evidence of physical manifestation of her emotional distress.¹⁸

With her Motion, Bollinger submitted the affidavits Physician Assistant Helen Kenney¹⁹ and Licensed Professional Counselor Gracie Hargraves,²⁰ both of whom have provider-patient relationships with Bollinger. Gracie Hargraves (hereinafter "Hargraves"), in her Affidavit, repeatedly declares that her conclusions are based on Bollinger's own statements.²¹ Bollinger apparently told Hargraves that her symptoms began after her termination from Fall River, and that her physical symptoms were a direct

¹⁷ *Summary Judgment Order*, at pp. 21-22.

¹⁸ *Summary Judgment Order*, at pp. 22-23.

¹⁹ See: Affidavit of Helen Kenney, PA-C, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed July 28, 2010) (hereinafter the "Kenney Affidavit").

result of her termination.²² Although Hargraves concludes that Bollinger's symptoms are more consistent with anxiety, depression, and post traumatic stress syndrome,²³ Hargraves also affies that Bollinger has been treated for symptoms of depression and anxiety before her termination.²⁴

Helen Kenney (hereinafter "Kenney"), in her Affidavit, states that she began seeing Bollinger on January 15, 2010 for Bollinger's complaints of insomnia, concentration difficulty and weight loss.²⁵ Despite the lack of evidence of a patient-provider relationship prior to Bollinger's termination, Kenney affirmatively states that (1) Bollinger did not experience any of these symptoms prior to her termination from Fall River; (2) Bollinger's complaints are a direct result of her termination from Fall River; and (3) no other explanation for Bollinger's symptoms, of which Kenney is aware, exists.²⁶

Kenney offers no explanation as to how she came to her conclusions. Kenney does not provide evidence of Bollinger's medical complaints prior to her termination, nor does she mention consulting with any medical providers who might have seen Bollinger before her termination.

²⁰ See: Affidavit of Gracie Hargraves – LCPC, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed July 28, 2010) (hereinafter the "**Hargraves Affidavit**").

²¹ Hargraves Affidavit, at p. 2.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Kenney Affidavit, at p. 2.

²⁶ Id.

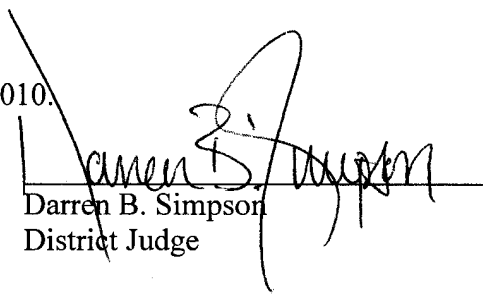
For these reasons, the Kenney Affidavit and the Hargraves Affidavit do not raise a material issue of fact as to Bollinger's physical manifestations of her alleged negligent infliction of emotional distress. Even if they could be so construed, however, Bollinger has not shown Fall River's breach of a duty.

For these reasons, Bollinger's Motion, as it pertains to her negligent infliction of emotional distress claim, shall be denied.

In light of the above, Bollinger's Motion for Reconsideration shall be **denied**.

IT IS SO ORDERED.

DATED this 12TH day of October 2010.


Darren B. Simpson
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Order Denying Plaintiff's Motion for Reconsideration was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by facsimile this 12th day of October 2010, to:

John M. Ohman, Esq.
COX, OHMAN &
BRANDSTETTER, CHARTERED
510 "D" Street
P.O. Box 51600
Idaho Falls, ID 83405-1600

U.S. Mail Courthouse Box Facsimile

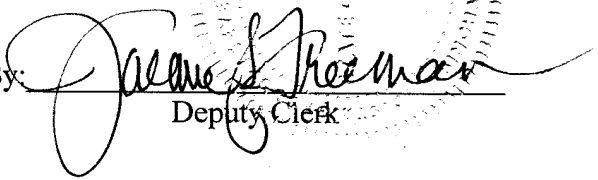
Jerry R. Rigby, Esq.
RIGBY, ANDRUS & RIGBY,
CHTD.
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440

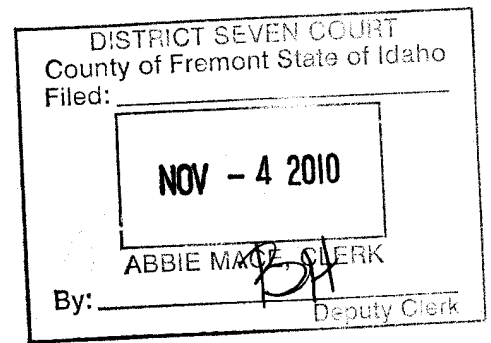
U.S. Mail Courthouse Box Facsimile

Jathan Janove, Esq.
James M. Barrett, Esq.
ATER WYNNE LLP
1331 N.W. Lovejoy Street, Suite
900
Portland, OR 97209-3280

U.S. Mail Courthouse Box Facsimile

ABBIE MACE, Clerk of the Court

By: 
Deputy Clerk



JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Email: cobjmo@ida.net
Idaho State Bar #1501

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
Corporation; BRYAN CASE; LARRY
HAMILTON; and DOES 1-5,

Defendants.

Case No. CV-10-36

**NOTICE OF APPEAL
(IAR 17)**

**TO: FALL RIVER RURAL ELECTRIC COOPERATIVE, INC., AND ITS ATTORNEY,
JAMES M. BARRETT, ESQ. AND THE CLERK OF THE WITHIN COURT.**

NOTICE IS HEREBY GIVEN THAT:

Plaintiff-Appellant, SUZETTE BOLLINGER, by and through her attorney, John M. Ohman,
Esq., of Cox, Ohman & Branstetter, Chartered, pursuant to IAR 17, files this NOTICE OF APPEAL

NOTICE OF APPEAL- 1

S:\MICK\Clients\Bollinger.Suzette\APPEAL\Notice of Appeal.wpd

as follows:

1. This appeal is taken from the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Fremont, Honorable Darren B. Simpson, District Judge, presiding.
2. This appeal is being taken to the Idaho Supreme Court.
3. The date and heading of the judgment and order from which appeal is taken are:
 - A. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, dated July 15, 2010;
 - B. ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION, dated October 12, 2010.
4. The appeal is taken from both matters of law and fact, and the issues to be addressed will include:
 - A. Could Plaintiff's employment status be changed to "at will" to enable Defendant to terminate her "without cause" in violation of long standing personnel policies.
 - B. Did Plaintiff have a Contract of Employment, either expressed or implied, which precluded her termination with cause.
 - C. Did Defendant violate its covenant of good faith and fair dealing to Plaintiff.
 - D. Was Plaintiff's termination violative of public policy.
 - E. Do Defendant's actions constitute either an intentional infliction of emotional distress or a negligent infliction of emotional distress to Plaintiff.
 - F. Was Defendant's discharge of Plaintiff in retaliation for Plaintiff's insisting on compliance with safety regulations.
5. This action is appealable to the Idaho Supreme Court in that said Orders are included among those specifically set forth in IAR 11, and are final judgments from which the time for appeal is not expired.
6. Plaintiff-Appellant requests a standard Reporter's Transcript, in compressed form, as described in IAR 26.

NOTICE OF APPEAL- 2

S:\MICK\Clients\Bollinger.Suzette\APPEAL\Notice of Appeal.wpd

7. Plaintiff-Appellant requests a Clerk's Record, to consist of those things automatically included pursuant to IAR 28.
8. In filing this Notice of Appeal, Plaintiff - Appellant certifies that:
 - A. A copy of this Notice of Appeal has been made upon the Court Reporter.
 - B. That the estimated fee for preparation of the Reporter's transcript, and the Clerk's record will be paid immediately upon notice from the Clerk of the amount.
 - C. The Appellate filing fee has been paid.

DATED this 3 day of November, 2010.



 JOHN M. OHMAN, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 3 day of November, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

Jathan Janove, Esq.
 James Barrett, Esq.
 Ater Wynne LLP
 1331 NW Lovejoy Street, Suite 900
 Portland, OR 97209-2785
 Fax: (503) 226-0079

- By pre-paid post
- By hand delivery
- By facsimile transmission
- By courthouse box
- By electronic transmission



 JOHN M. OHMAN, ESQ.

NOTICE OF APPEAL- 3

S:\MICK\Clients\Bollinger.Suzette\APPEAL\Notice of Appeal.wpd

IDAHO SUPREME COURT

Clerk of the Courts
(208) 334-2210

ABBIE MACE, CLERK
Attn: BECKY
FREMONT COUNTY COURTHOUSE
151 WEST 1ST NORTH
ST ANTHONY, ID 83445



JUDICIAL DISTRICT SEVEN IDAHO COURT OF APPEALS
Fremont State of Idaho

NOV 18 2010	P.O. Box 83720 Boise, Idaho 83720-0101
By: _____	ABBIE MACE, CLERK Deputy Clerk

NOTICE OF APPEAL FILED (C)

Docket No. 38248-2010	SUZETTE Y. BOLLINGER	Fremont County District Court
	v. FALL RIVER RURAL	#2010-36
	ELECTRIC COOPERATIVE,	
	INC.	

A NOTICE OF APPEAL in the above-entitled matter was filed in this office on NOVEMBER 8, 2010. The DOCKET NUMBER shown above will be used for this appeal regardless of eventual Court assignment.

The CLERK'S RECORD must be filed in this office on or before JANUARY 18, 2010.

For the Court:
Stephen W. Kenyon
Clerk of the Courts

11/16/2010 DB

STATE OF IDAHO
SUPREME COURT COURT OF APPEALS



Stephen W. Kenyon
Clerk of the Court
Karel A. Lehrman
Chief Deputy Clerk

Supreme Court Building
P.O. Box 83720
Boise, Idaho 83720-0101
(208) 334-2210

November 16, 2010

Jerry R. Rigby
PO Box 250
Rexburg ID 83440

Re: Bollinger v. Fall River Rural Electric Cooperative, Inc.
Supreme Court Docket No. 38248

Dear Mr. Rigby;

We filed the Notice of Appeal in the above captioned matter on November 8, 2010.

We noticed in the Notice of Appeal that Jathan Janove and James Barrett of Portland, Oregon are shown as co-counsel for the Respondent. If Jathan Janove and James Barrett will be participating in this Appeal in any manner it will be necessary for you to file with this Court for approval a Motion for Association of Foreign Counsel pursuant to I.A.R 9, and I.B.C.R. 222.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy Beaver".

Dorothy Beaver, Senior Deputy Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

STATE OF IDAHO
SUPREME COURT COURT OF APPEALS



Stephen W. Kenyon
Clerk of the Court
Karel A. Lehrman
Chief Deputy Clerk

Supreme Court Building
P.O. Box 83720
Boise, Idaho 83720-0101
(208) 334-2210

November 16, 2010

John M. Ohman
PO Box 51600
Idaho Falls ID 83405-1600

Re: Bollinger v. Fall River Rural Electric Cooperative, Inc.
Supreme Court Docket No. 38248

Dear Mr. Ohman,

The Notice of Appeal filed in District Court November 8, 2010 requests preparation of the "standard transcript". There was no trial in this case, therefore, a transcript will not be prepared unless an Amended Notice of Appeal is filed with the District Court within fourteen (14) days from the date of this letter, listing the title and date of the proceedings being requested and shall indicate which reporter(s) were served.

Sincerely,


Dorothy Beaver, Deputy Clerk

Cc: Counsel of Record
District Court Clerk
District Court Reporter

IDAHO SUPREME COURT

Clerk of the Courts
(208) 334-2210

ABBIE MACE, CLERK
Attn: BECKY
FREMONT COUNTY COURTHOUSE
151 WEST 1ST NORTH
ST ANTHONY, ID 83445



DISTRICT SEVEN COURT
County of Fremont State of Idaho

IDAHO COURT OF APPEALS

NOV 26 2010

P.O. Box 83720

Boise, Idaho 83720-0101

ABBIE MACE, CLERK

By: *[Signature]*
Deputy Clerk

CLERK'S CERTIFICATE FILED

Docket No. 38248-2010

SUZETTE Y.
BOLLINGER v. FALL
RIVER RURAL
ELECTRIC
COOPERATIVE, INC.

Fremont County District Court
#2010-36

Enclosed is a copy of the CLERK'S CERTIFICATE for the above-entitled appeal, which was filed in this office on NOVEMBER 22, 2010.

Please carefully examine the TITLE and the CERTIFICATE and advise the District Court Clerk (or the Agency secretary, if applicable) AND this office of any errors detected on this document.

The TITLE in the CERTIFICATE must appear on all DOCUMENTS filed in this Court, including all BRIEFS. An abbreviated version of the TITLE may be used if it clearly identifies the parties to this appeal when the title is extremely long.

For the Court:
Stephen W. Kenyon
Clerk of the Courts

11/23/2010 DB

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR FREMONT COUNTY

Suzette Y Bollinger
Plaintiff(s)/Appellant(s),

VS

Fall River Rural Electric Cooperative, Inc
Defendant(s)/Respondent(s).

and

Bryan Case, Larry Hamilton and Does 1-5
Defendant

Case No. CV-2010-0000036

CLERK'S CERTIFICATE OF APPEAL

Supreme Court Docket No: 38248

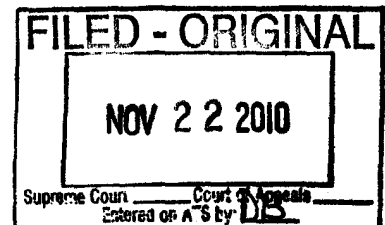
APPEAL FROM THE SEVENTH JUDICIAL DISTRICT, FREMONT COUNTY
HONORABLE JUDGE DARREN B. SIMPSON PRESIDING

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS
2011 NOV 22 A 9 25

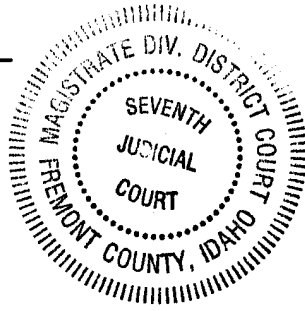
CASE NUMBER FROM COURT: CV-2010-0000036
ORDER OR JUDGMENT APPEALED FROM: Order Granting Defendant's Motion for Summary Judgment & Order Denying Plaintiff's Motion for Reconsideration
ATTORNEY FOR APPELLANT: John Ohman
ATTORNEY FOR RESPONDENT: Jerry Rigby
APPEALED BY: Fall River Rural Electric Cooperative, Inc
APPEALED AGAINST: Suzette Y Bollinger
NOTICE OF APPEAL FILED: November 4, 2010
AMENDED NOTICE OF APPEAL FILED: N/A
NOTICE OF CROSS-APPEAL FILED: N/A
AMENDED NOTICE OF CROSS-APPEAL FILED: N/A
APPELLATE FEE PAID: YES
RESPONDENT OR CROSS-RESPONDENT'S REQUEST FOR ADDITIONAL RECORD FILED: N/A
TRANSCRIPT FILED:
WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED? YES - Not Specified
DISTRICT COURT REPORTER: N/A

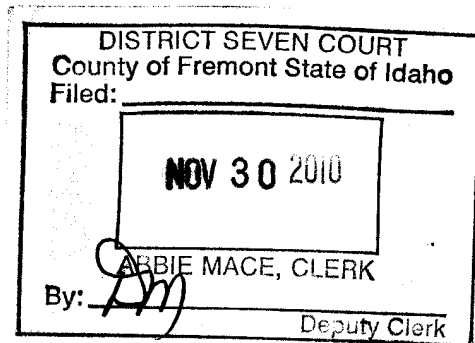
Dated this 19th day of November, 2010

ABBIE MACE
Clerk of the District Court



Becky Harrigfeld
Becky Harrigfeld
Deputy Clerk





JOHN M. OHMAN, ESQ.
COX, OHMAN & BRANDSTETTER, CHARTERED
510 "D" STREET
P.O. BOX 51600
IDAHO FALLS, ID 83405-1600
(208) 522-8606
Fax: (208) 522-8618
Email: cobjmo@ida.net
Idaho State Bar #1501

ATTORNEYS FOR PLAINTIFF

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,

Plaintiff,

vs.

FALL RIVER RURAL ELECTRIC
COOPERATIVE, INC., an Idaho
Corporation; BRYAN CASE; LARRY
HAMILTON; and DOES 1-5,

Defendants.

Case No. CV-10-36

**AMENDED NOTICE OF APPEAL
(IAR 17)**

**TO: FALL RIVER RURAL ELECTRIC COOPERATIVE, INC., AND ITS ATTORNEY,
JAMES M. BARRETT, ESQ. AND THE CLERK OF THE WITHIN COURT.**

NOTICE IS HEREBY GIVEN THAT:

Plaintiff-Appellant, SUZETTE BOLLINGER, by and through her attorney, John M. Ohman,
Esq., of Cox, Ohman & Brandstetter, Chartered, pursuant to IAR 17 and by direction of the Idaho

NOTICE OF APPEAL- 1

S:\MICK\Clients\Bollinger,Suzette\APPEAL\Amended Notice of Appeal.wpd

Supreme Court, files this AMENDED NOTICE OF APPEAL as follows:

1. This appeal is taken from the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Fremont, Honorable Darren B. Simpson, District Judge, presiding.
2. This appeal is being taken to the Idaho Supreme Court.
3. The date and heading of the judgment and order from which appeal is taken are:
 - A. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, dated July 15, 2010;
 - B. ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION, dated October 12, 2010.
4. The appeal is taken from both matters of law and fact, and the issues to be addressed will include:
 - A. Could Plaintiff's employment status be changed to "at will" to enable Defendant to terminate her "without cause" in violation of long standing personnel policies.
 - B. Did Plaintiff have a Contract of Employment, either expressed or implied, which precluded her termination with cause.
 - C. Did Defendant violate its covenant of good faith and fair dealing to Plaintiff.
 - D. Was Plaintiff's termination violative of public policy.
 - E. Do Defendant's actions constitute either an intentional infliction of emotional distress or a negligent infliction of emotional distress to Plaintiff.
 - F. Was Defendant's discharge of Plaintiff in retaliation for Plaintiff's insisting on compliance with safety regulations.
5. This action is appealable to the Idaho Supreme Court in that said Orders are included among those specifically set forth in IAR 11, and are final judgments from which the time for appeal is not expired.
6. Plaintiff-Appellant requests a standard Reporter's Transcript, as described in IAR 26, OF THE HEARINGS HELD ON May 27, 2010, on Defendant's Motion for Summary Judgment, and on Plaintiff's Motion for Reconsideration on August 20,

NOTICE OF APPEAL- 2

S:\MICK\Clients\Bollinger,Suzette\APPEAL\Amended Notice of Appeal.wpd

2010.

7. Plaintiff-Appellant requests a Clerk's Record, to consist of the following:

<u>DATE</u>	<u>TITLE</u>
1/15/2010	Complaint and Demand for Trial by Jury
2/3/2010	Amended Complaint and Demand for Trial by Jury
2/16/2010	Defendant's Answer and Affirmative Defenses to Amended Complaint
3/11/2010	Motion for Limited Admission
4/23/2010	Defendant's Rule 56 Motion for Summary Judgment
4/23/2010	Memorandum in Support of Defendant's Rule 56 Motion for Summary Judgment
4/23/2010	Affidavit of James M. Barrett in Support of Defendant's Rule 56 Motion for Summary Judgment
5/14/2010	Affidavit of Suzette Bollinger in Opposition to Defendant's Motion for Summary Judgment
5/14/2010	Affidavit of Authenticity in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment
5/14/2010	Plaintiff's Reply Memorandum in Opposition to Defendant's Motion for Summary Judgment
5/25/2010	Reply in Support of Defendant's Rule 56(b) Motion for Summary Judgment
5/27/2010	Minute Entry type: Hearing - Motion for Summary Judgment Hearing date: 5/27/2010 Time: 12:57 p.m. Courtroom: Court reporter: Minutes Clerk; Becky J. Harrigfeld Tape Number: Disk 16 Party: Fall River Rural Electric Cooperative, Inc., Attorney: Jerry Rigby Party: Suzette Bollinger, Attorney: John Ohman Hearing result for Hearing held on 5/27/2010 01:00
7/15/2010	Order Granting Defendant's Motion for Summary Judgment

NOTICE OF APPEAL- 3

S:\MICK\Clients\Bollinger, Suzette\APPEAL\Amended Notice of Appeal.wpd

<u>DATE</u>	<u>TITLE</u>
7/15/2010	Judgment - Suzette Bollinger Claim Against Fall River, Judgment is Nothing.
7/28/2010	Affidavit of Gracie Hargraves
7/28/2010	Motion for Reconsideration
7/28/2010	Affidavit of Helen Kenney
7/28/2010	Affidavit of Counsel in Support of Motion for Reconsideration
7/29/2010	Exhibit A
8/13/2010	Supplemental Affidavit of Bryan Case in Support of Defendant's Opposition to Plaintiff's Motion for Reconsideration
8/13/2010	Defendant's Opposition to Plaintiff's Motion for Reconsideration
10/15/2010	Order Denying Plaintiff's Motion for Reconsideration- Bollinger's Motion for Reconsideration is Denied

8. In filing this Notice of Appeal, Plaintiff - Appellant certifies that:
- A. A copy of this Amended Notice of Appeal has been made upon the Court Reporter.
 - B. That the estimated fee for preparation of the Reporter's transcript, and the Clerk's record will be paid immediately upon notice from the Clerk of the amount.
 - C. The Appellate filing fee has been paid.

DATED this 24 day of November, 2010.



 JOHN M. OHMAN, ESQ.

NOTICE OF APPEAL- 4

S:\MICK\Clients\Bollinger.Suzette\APPEAL\Amended Notice of Appeal.wpd

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on the 27 day of November, 2010, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon or by hand delivering or by transmitting by facsimile as set forth below.

Jathan Janove, Esq.
James Barrett, Esq.
Ater Wynne LLP
1331 NW Lovejoy Street, Suite 900
Portland, OR 97209-2785
Fax: (503) 226-0079

- By pre-paid post
- By hand delivery
- By facsimile transmission
- By courthouse box
- By electronic transmission



JOHN M. OHMAN, ESQ.

NOTICE OF APPEAL- 5

S:\MICK\Clients\Bollinger,Suzette\APPEAL\Amended Notice of Appeal.wpd

December 10, 2010

AT 2:05pm

Darren B. Simpson
DARREN B. SIMPSON
DISTRICT JUDGE

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

SUZETTE BOLLINGER,)
)
 Plaintiff,)
)
 vs.)
)
 FALL RIVER RURAL ELECTRIC)
 COOPERATIVE, INC., an Idaho)
 corporation,)
)
 Defendant.)

Case No. CV-2010-36

ORDER GRANTING DEFENDANT'S
REQUEST FOR COSTS

Following entry of judgment in favor of Defendant Fall River Rural Electric Cooperative, Inc., an Idaho corporation, (hereinafter "Fall River"),¹ Fall River requested an award of costs pursuant to Idaho Rule of Civil Procedure 54(d).² Plaintiff Suzette Bollinger (hereinafter "Bollinger") moved to disallow certain costs claimed by Fall River.³ Based upon the record and the arguments of the parties, Fall River's Motion should be granted and Bollinger's Motion shall be denied.

A prevailing party to a lawsuit is entitled to recover its costs.⁴ In determining which party to an action is a prevailing party and entitled to costs, the result of the action, in relation to

¹ See: Judgment, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed July 15, 2010) (hereinafter "**Judgment**").

² Defendant's Memorandum of Costs, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed July 29, 2010) (hereinafter "**Fall River's Motion**").

³ Motion to Disallow Costs, *Bollinger v. Fall River Rural Electric Cooperative, Inc.*, Fremont County case no. CV-2010-36 (filed August 4, 2010) (hereinafter "**Suzette's Motion to Disallow**").

⁴ Idaho Rule of Civil Procedure 54(d)(1).

the relief sought by the respective parties, must be considered.⁵ In this case, Fall River is clearly the prevailing party, as Bollinger's claims were summarily adjudicated and Bollinger took nothing by her lawsuit against Fall River.⁶

Idaho Rule of Civil Procedure 54(d)(1)(C) sets out those costs which the prevailing party may recover as a matter of right. Idaho Rule of Civil Procedure 54(d)(1)(D) provides that additional cost items, not enumerated in subsection (d)(1)(C), may be awarded at this Court's discretion upon a showing that such costs were necessary and exceptional, and reasonably incurred.⁷

The only contested items in Fall River's Motion are the service fees of documents served upon opposing counsel, the District Court and this Court.⁸ Idaho Rule of Civil Procedure 54(d)(1)(C)(2) allows recovery of "[a]ctual fees for service of any pleading or document in the action whether served by a public officer or other person." Bollinger maintains that Fall River's requested service fees are discretionary, rather than costs as a matter of right.⁹

Rule 54(d)(1)(C)(2) sweeps broadly. It applies to *any* pleading or document and does not limit the covered recipients. Fall River seeks fees for documents served upon opposing counsel and the Court. It should be noted that this Court does not sit in the venue in which this action took place. Thus, service upon the District Court in Fremont County, as well as service upon this Court at its resident chambers, per Idaho Rule of Civil Procedure 7(b)(3)(F), was required.

⁵ *Id.*

⁶ *See*: Judgment.

⁷ Idaho Rule of Civil Procedure 54(d)(1)(D).

⁸ Fall River's Motion, at p. 2; Bollinger's Motion, at p. 2.

⁹ Bollinger's Motion, at p. 2.

Bollinger does not contest the foundation of Fall River's claim, only the applicable legal basis for the award. Since the language of Rule 54(b)(1)(C)(2) provides no limitation for service fees of pleadings or documents, Fall River's service fees appear appropriate thereunder.

Accordingly, based upon Fall River's Motion, Fall River shall recover the following costs as a matter of right in the amount of **\$1,042.99** broken down as follows:

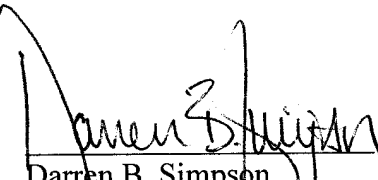
- a. Service fees on Bollinger and the Court - **\$137.54**;¹⁰ and
- b. Deposition fees - **\$905.45**.¹¹

In accordance with the foregoing findings and conclusions, Fall River's request for costs is **granted**. Bollinger's Motion to Disallow Costs is **denied**.

An amended judgment shall issue.

IT IS SO ORDERED.

DATED this 10TH day of December 2010.


Darren B. Simpson
District Judge

¹⁰ Idaho Rule of Civil Procedure 54(d)(1)(C)(2); Fall River's Motion, at p. 2.

¹¹ Idaho Rule of Civil Procedure 54(d)(1)(C)(9); Fall River's Motion, at p. 2.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on Dec. 10, 2010, I served a true copy of the foregoing *Order Granting Defendant's Request for Costs* to the persons listed below by mailing, first class, postage prepaid; by facsimile transmission; or by hand delivery.

John M. Ohman, Esq.
COX, OHMAN &
BRANDSTETTER,
CHARTERED
510 "D" Street
P.O. Box 51600
Idaho Falls, ID 83405-1600

U.S. Mail Courthouse Box Facsimile

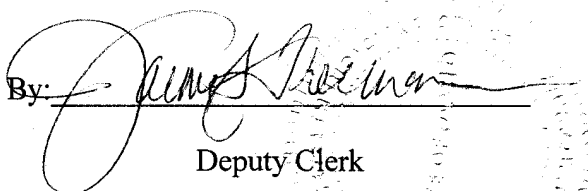
Jerry R. Rigby, Esq.
RIGBY, ANDRUS & RIGBY,
CHTD.
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440

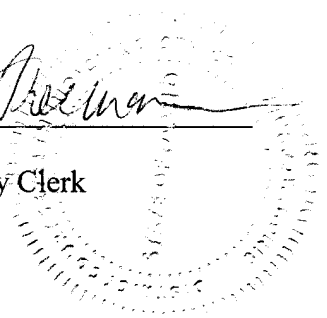
U.S. Mail Courthouse Box Facsimile

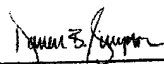
Jathan Janove, Esq.
James M. Barrett, Esq.
ATER WYNNE LLP
1331 N.W. Lovejoy Street, Suite
900
Portland, OR 97209-3280

U.S. Mail Courthouse Box Facsimile

ABBIE MACE, Clerk of the Court

By: 
Deputy Clerk



December 10, 2010
AT 2:05 pm

DARREN B. SIMPSON
DISTRICT JUDGE

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

SUZETTE BOLLINGER,)
)
Plaintiff,)
)
vs.)
)
FALL RIVER RURAL ELECTRIC)
COOPERATIVE, INC., an Idaho)
corporation,)
)
Defendant.)

Case No. CV-2010-36
**FIRST AMENDED
JUDGMENT**

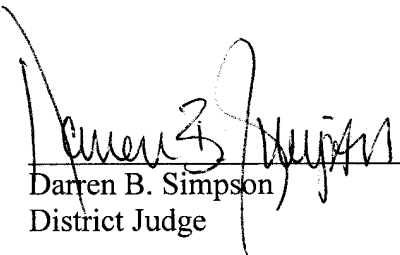
In light of the *Order Granting Defendant's Motion for Summary Judgment* entered in this case, and the *Order Granting Defendant's Request for Costs*, entered this day, entry of the First Amended Judgment is appropriate in the above-styled and numbered cause. Accordingly,

It is ordered that Plaintiff Suzette Bollinger shall take nothing by her lawsuit against Defendant Fall River Rural Electric Cooperative, Inc., an Idaho corporation.

Defendant Fall River Rural Electric Cooperative, Inc. shall recover costs as a matter of right in the amount of \$1,042.99.

IT IS SO ORDERED.

DATED this 10th day of December 2010.


Darren B. Simpson
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing *First Amended Judgment* was mailed by first class mail with prepaid postage and/or hand delivered and/or sent by facsimile this 10th day of December 2010, to:

John M. Ohman, Esq.
COX, OHMAN &
BRANDSTETTER, CHARTERED
510 "D" Street
P.O. Box 51600
Idaho Falls, ID 83405-1600

U.S. Mail Courthouse Box Facsimile

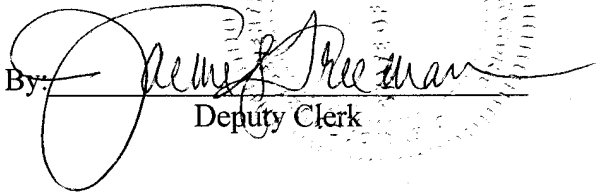
Jerry R. Rigby, Esq.
RIGBY, ANDRUS & RIGBY,
CHTD.
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440


U.S. Mail Courthouse Box Facsimile

Jathan Janove, Esq.
James M. Barrett, Esq.
ATER WYNNE LLP
1331 N.W. Lovejoy Street, Suite
900
Portland, OR 97209-3280

U.S. Mail Courthouse Box Facsimile

ABBIE MACE, Clerk of the Court

By: 
Deputy Clerk

DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed:
 DEC 13 2010
 ABBIE MACE, CLERK
 By: 
 ORDER GRANTING MOTION

In the Supreme Court of the State of Idaho

SUZETTE Y. BOLLINGER,)
)
 Plaintiff-Appellant,)
)
 v.)
)
 FALL RIVER RURAL ELECTRIC)
 COOPERATIVE, INC., an Idaho corporation,)
)
 Defendant-Respondent,)
)
 and)
)
 BRYAN CASE, LARRY HAMILTON and)
 DOES 1-5,)
)
 Defendants.)

ORDER GRANTING MOTION
 FOR ASSOCIATION OF
 FOREIGN COUNSEL

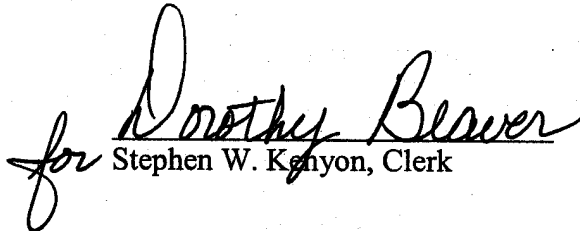
Supreme Court Docket No. 38248
 Fremont County Docket No.
 2010-36

IT HEREBY IS ORDERED that Respondent's Motion for Association of Non-Resident Counsel, be and hereby is, GRANTED and LORI BAUMAN duly admitted to the bar of Oregon, be and hereby is, allowed to appear before this Court with regard to this Appeal; subject to compliance with the requirements of IBCR 222-limited admission/pro hac vice.

IT FURTHER IS ORDERED that RESIDENT COUNSEL must sign all documents and briefs filed with this Court and appear with Non-Resident Counsel at oral argument unless otherwise provided by an order of this Court.

DATED this 10th day of December 2010.

For the Supreme Court


 for Stephen W. Kenyon, Clerk

cc: Counsel of Record
 District Court Clerk
 District Court Reporter

ORDER GRANTING ASSOCIATION OF FOREIGN COUNSEL – Docket No. 34248-2010

IDAHO SUPREME COURT



IDAHO COURT OF APPEALS

Clerk of the Courts
(208) 334-2210

DISTRICT SEVEN COURT
 County of Fremont State of Idaho
 Filed: _____
 DEC 13 2010
 ABBIE MACE, CLERK
 By: _____ Deputy Clerk

P.O. Box 83720
Boise, Idaho 83720-0101

ABBIE MACE, CLERK
Attn: BECKY
FREMONT COUNTY COURTHOUSE
151 WEST 1ST NORTH
ST ANTHONY, ID 83445

TRANSMITTAL OF DOCUMENT

Docket No. 38248-2010

SUZETTE Y. BOLLINGER v. Fremont County District Court
FALL RIVER RURAL Docket
ELECTRIC COOPERATIVE, 2010-36
INC.

The enclosed document(s) relating to the above-entitled case is/are forwarded for your information.

For the Court:
Stephen W. Kenyon
Clerk of the Courts

12/10/2010 11:05 AM DB

IDAHO SUPREME COURT



IDAHO COURT OF APPEALS

Clerk of the Courts
(208) 334-2210

P.O. Box 83720

DISTRICT Boise, Idaho 83720-0101
County of Fremont State of Idaho
Filed:

DEC 22 2010

ABBIE MACE, CLERK

By: *DM*
Deputy Clerk

ABBIE MACE, CLERK
Attn: BECKY
FREMONT COUNTY COURTHOUSE
151 WEST 1ST NORTH
ST ANTHONY, ID 83445

TRANSMITTAL OF DOCUMENT

Docket No. 38248-2010 SUZETTE Y. BOLLINGER v. Fremont County District Court
FALL RIVER RURAL Docket
ELECTRIC COOPERATIVE, 2010-36
INC.

The enclosed document(s) relating to the above-entitled case is/are forwarded for your information.

For the Court:
Stephen W. Kenyon
Clerk of the Courts

12/21/2010 12:15 PM DB

STATE OF IDAHO
SUPREME COURT COURT OF APPEALS

Stephen W. Kenyon
Clerk of the Court
Karel A. Lehrman
Chief Deputy Clerk



Supreme Court Building
P.O. Box 83720
Boise, Idaho 83720-0101
(208) 334-2210

December 21, 2010

John M. Ohman
PO Box 51600
Idaho Falls ID 83405-1600

RE: Bollinger v. Fall River Rural Electric
Idaho Supreme Court Docket No. 38248

Dear Mr. Ohman:

The District Court Clerk advised this office that you have paid the estimated fees for preparation of the Clerk's Record, but that the fee for preparation of the Reporter's Transcript has not yet been paid. Our Appellate Rules do not require a Reporter's Transcript be provided to the Court, only a Clerk's Record. Accordingly, we will proceed with this appeal on the Clerk's Record only unless the fees for preparation of the Reporter's Transcript are paid within the next fourteen (14) days. By copy of this letter to the District Court Clerk and Reporter, I am asking that this office be advised concerning payment and if no payment is received we will proceed on the Clerk's Record only.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy Beaver".

Dorothy Beaver
Senior Deputy Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

IDAHO SUPREME COURT



IDAHO COURT OF APPEALS


Clerk of the Courts
(208) 334-2210

P.O. Box 83720
Boise, Idaho 83720-0101

ABBIE MACE, CLERK
Attn: BECKY
FREMONT COUNTY COURTHOUSE
151 WEST 1ST NORTH
ST ANTHONY, ID 83445

DISTRICT SEVEN COURT
County of Fremont State of Idaho
Filed:

JAN - 5 2011

ABBIE MACE, CLERK
By: 
Deputy Clerk

CLERK'S RECORD AND TRANSCRIPT DUE DATE RESET

Docket No. 38248-2010

SUZETTE Y. BOLLINGER
v. FALL RIVER RURAL
ELECTRIC COOPERATIVE,
INC.

Fremont County District Court
#2010-36

The CLERK'S RECORD and REPORTER'S TRANSCRIPT must be filed in this office 3-8-2011.