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CONGRESS OF THE UNITED STATES

LOUISE M. SLAUGHTER
30TH DISTRICT, NEW YORK

December 22, 1992

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Mr. Dennis K. Rathbun
Director, Office of Congressional Affairs
Nuclear Regulatory Commission
Washington, D.C. 20555

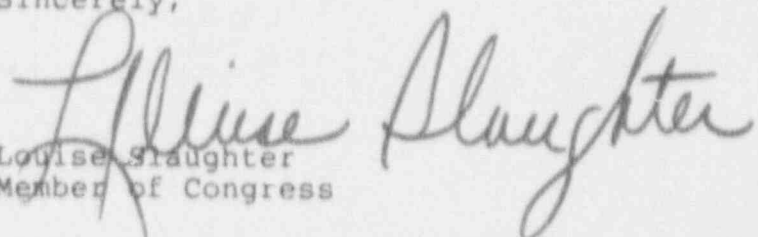
Dear Mr. Rathbun:

I am writing on behalf of my constituent, Mr. Edward S. Wolleson, concerning complaints and concerns about his former employer, the Crystal River Nuclear Plant in Florida. I have enclosed a copy of correspondence that documents this case.

I would appreciate your reviewing this correspondence to assist my constituent in this matter. Please direct all questions and correspondence to David Hunt in my Rochester District Office.

Thank you for your assistance. I look forward to your reply.

Sincerely,


Louise Slaughter
Member of Congress

LMS/dgh
Enclosure

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Edward S.
Wollesen

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The Honorable Louise Slaughter
311 Federal Building
100 State Street
Rochester N.Y. 14614

ATTN: Mr. David Hunt

December 14, 1992

Dear Mr. Hunt:

This letter is to request your review of the recent Administrative Judge's Decision in my Nuclear Whistleblower case, and help bringing justice to myself and Ms. Collins-Burgess. To make this correspondence clear and bring our point to your attention, I have identified and gathered the Judge's conditions for discrimination which showed clear discrimination and the Judge further determined FPC conducted an "interrogation and not interview" using "heavy handed", "scare tactics" and "Pelham intimidated Wollesen" in front of Mr. Ray Yost prior to the termination of Wollesen. The termination was based on feed-back from Yost from that "interrogation". Thus the decision dated Dec 4, 1992 is questionable.

FIRST CONDITION (OF 3):

DISCRIMINATION CONCERN: Para. 284, page 56 bottom, finishing the last sentence on page 57.

"Most troubling for FPC would be disparate treatment of Wollesen; i.e. that individuals responsible for firing Wollesen were aware of others engaging in personal, for-profit business on FPC premises, and allowed them to do so with immunity, while firing Wollesen for the same activity.... it is important to establish the identity of the individuals responsible, either directly or indirectly, for the decision to terminate Wollesen".

INDIVIDUALS RESPONSIBLE: Para. 284, page 57 middle:

".... Larry Kelly, Director of Nuclear Operations Training Center, recommended to Beard that Wollesen be fired (TR 919,920)"....Therefore, I find the following individuals responsible for the decision to terminate Complainant Wollesen: Ray Yost, Bruce Hickle, Larry Kelly, Jim Dalonzo, and Pat Beard. If any of these individuals discriminated against Wollesen for conducting a personal for-profit business on FPC premises while others operated with immunity, this would constitute circumstantial evidence in Wollesen's favor...."

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OTHER INDIVIDUALS CONDUCTING FOR-PROFIT BUSINESS ON FPC PREMISES
AND FPC ALLOWED THEM TO DO SO WITH IMMUNITY:

Example 1) Para. 186, page 40, middle:

"When Kelly learned that Mr. Kamann brought in two flower arrangements for the lobby of the newly opened building, Kelly did not investigate Kamann's E-Mail...and he didn't fire Mr. Kamann (TR 1695, 1696)...Kelly became aware of Mr. Kamann's Activities during the course of this litigation, and he still has not made up his mind exactly what to do about it..."

NOTE: In the transcript Kelly admits that Mr. Kamann did not receive any reprimand as of the last week of the hearings, March 1992; months after Kelly heard Kamann's testimony in deposition, October 1991.

For FPC's position on the type of the business, I refer you to Para. 69, top sentence on page 20:

"Had the business been an Avon business or a jewelry selling business, they probably would have still been fired without progressive steps (TR 962)"

The Judge in para. 234, page 57 states:

"I am also excluding Terry Kamann. While he exercised poor leadership in conducting his own flower and craft sales (paras 59, 209), and thus set a bad example for his staff [(Ms. Collins)] there is no evidence that Kelly knew the extent of his business or that Kamann had input in the decision to fire Wollesen."

It is true Mr. Kamann was not a decision maker, but Mr. Kelly recommended Mr. Wollesen's firing. Kelly admits to knowing Mr. Kamann was conducting his business when the Training Center new building opened. Never the less, there is no difference between Mr Kelly knowing of others prior to the firing or after the firing of Wollesen, and during the litigation. Mr. Kamann was not given any discipline, while FPC testifies to maintain the position: "Had the business been an Avon business or a jewelry selling business, they probably would have still been fired without progressive steps. (TR 962)."

NOTE: Additional paragraphs explaining Mr. Kamann's business: Para. 59, page 17; Para 31, page 10; Para. 286; page 61: " On another occasion, Kelly came into the Lobby and saw flower arrangements with a price tag on them. When Kelly found out that Kamann placed the flowers in the Lobby, Kelly to Kamann to remove the flowers because they were inappropriate (para 178).

Kelly was unaware of other for-profit businesses on FPC premises (para 178, 193)."

I noted the key word: OTHER

Example 2) Para. 190, page 41:

"Kelly identified CX 82A as the business card that he saw on the bulletin board around the latter part of 1990 or early 1991. It had Bonnie Collins name and phone number on it. It was clear to Mr. Kelly that Ms. Collins was doing business for profit and advertising on the premises (TR 1718)...Kelly didn't feel that any discipline was warranted (TR 1720).

The facts show that Kelly knew of Collin's and Kamann's business for some time prior to the firing of Wollesen and Kelly did nothing; even after the firing of Wollesen Kelly still allowed Kamann's activity with immunity.

SUMMARY: FPC allowed others (Mr. Kamann, and Ms. Collins) to do for-profit business on FPC premises, and allowed them to do so with immunity, while firing Wollesen.

SECOND CONDITION (OF 3):

INDIVIDUALS AWARE OF WOLLESEN'S FOR-PROFIT BUSINESSES AND DID NOTHING UNTIL AN EVENT TOOK PLACE WHICH COULD BE CHARACTERIZED AS A PROTECTED ACTIVITY. Para. 284, page 57 last sentence.:

"Also, if the evidence shows that these same individuals were aware of Wollesen conducting a for-profit business on company time (including Pleasure Company business), and did nothing about it until an event took place which could be characterized as protected activity on Wollesen's part, and then fired Wollesen in the pretext of conducting Pleasure Company business, this too would constitute circumstantial evidence in Wollesen's favor."

INDIVIDUALS RESPONSIBLE: Para. 284, page 57 middle:

"...Therefore, I find the following individuals responsible for the decision to terminate Complainant Wollesen: Ray Yost, Bruce Hickie, Larry Kelly, Jim Dalonzo, and Pat Beard...."

Para. 129, Page 31:

" On May 3, 1991, Wollesen told Yost that he was not actively marketing products on Florida Power Premises, but certain people had purchased pool chlorinators and he tried to respond to their questions. He tried to minimize his involvement. Yost told him that, regardless of his level of activity, engagement in the activity was prohibited by the company policy, and that if it continued, it would have the severest of consequences on his employment with Florida Power...."

AN EVENT TOOK PLACE WHICH COULD BE CHARACTERIZED AS PROTECTED ACTIVITY ON WOLLESEN'S PART:

In the documents submitted in exhibit was an "E-Mail" message from Mr. Wollesen to Mr. Yost. Sent on 4/30/91, read by Mr. Yost 5/3/91 at 4:24 PM. This was after the meeting with Ray Yost and showed that Wollesen was about to report issues by: "...2) Reporting and

Supervisor - In the event of questions that would normally be brought to your attention, should they follow the Compliance Department, or be brought to your attention and Compliances attention?..."

NOTE: A copy of the document is being submitted for your review; labeled 'Document Number For Identification "E-Mail"'

Para. 137, Page 33:

Yost never quite understood what Wollesen perceived to be the problem with the NGRC [sic, the group was the PRC]. They had unofficial notebook which contain'd some documents used as a guidance or quick reference which was not controlled. Wollesen believed it needed to be controlled.... Yost told him to identify the established criteria and specifically state how that criteria was being violated."

Since the Audit was under the direction of Mr. Steve Chernenko, Mr. Yost's request was given to Mr. Chernenko:

Para. 246, Page 49 and continuing to 50:

"In February of 1991, Chernenko served as an Audit Team Leader, the audit team consisted of Jeff Feet and Ed Wollesen...During the course of that particular audit, Mr. Wollesen handed Mr. Chernenko a document of 27 pages of information (TR 1995)_. The information was difficult to decipher. It was not in a usable format. Chernenko could not present it to management because, in some cases, it didn't make sense. However, after reviewing it with Mr. Wollesen, six items were identified on problem reports (TR 1996)."

This is the same report that the NRC issued a violation from after my termination due to the fact that Mr. Chernenko and Mr. Yost did not take the action required by the Quality Audit Program. This and other issues were the items that Mr. Yost was aware of to be reported; thus explaining the action taken by Mr. Yost after reading the "E-Mail".

THIRD CONDITION (OF 3):

WHETHER COMPLAINANTS ENGAGED IN PROTECTED ACTIVITY AND WHETHER RESPONDENT WAS AWARE OF SAID ACTIVITY:

Para.(s) 273, 274, 275, 276, 277 and

"278. The above considered, I find Edward Wollesen engaged in protected activity and Respondent was aware of said activity."

SUMMARY:

The evidence from the Judge's report and the inclusion of the "E-Mail" document copy from the exhibits, clearly FPC knew Wollesen was going to report, Wollesen had issues to report, FPC terminated Wollesen and Collins without warning while allowed others to be engaged in for-profit businesses with immunity; firing Wollesen only when he was ready to report issues that FPC was not reporting.

Therefore the Judge's decision favored FPC when in fact the Judge's conditions to prove discrimination of Mr. Wollesen were all met.

EXTRA ISSUE THAT SHOWS FPC'S ATTITUDE TOWARD NUCLEAR WORKERS:

Judge further determined FPC conducted an "interrogation and not interview" using "heavy handed", "scare tactics" and "Pelham intimidated Wollesen"

Para. 99, Page 26 Instructions from a "nuclear" Director to a non-nuclear Security Specialist, not trained in Nuclear Whistle Protection.

"Concerning Wollesen's exit (sic - FPC testified that the 'interview' was not an exit interview nor ever intended to be an exit interview) interview, the only instructions Hickie gave Pelham were to ask Wollesen if he had open safety issues. Hickie was not present during Wollesen's interview (TR 1182)...Hickie relied on what Yost told him in terminating Wollesen...."

Para. 307, 308, and 309; Pages 67 and 68.

"307. I used the word, 'interrogation' and not 'interview' in this section purposely because that is exactly what took place. John Pelham used scare tactics because as he said, 'he wanted answers' (RX 14, p. 40), he wanted Wollesen, 'to tell the truth' (RX 14, pp. 5, 8, 9). John Pelham was a witness in court, and I would describe him as a large, imposing gentleman. At times, Pelham intimidated Wollesen, especially by inquiring into Wollesen's personal relationship with Bonnie Collins (RX 14, pp. 11 and 12). Pelham used a carrot and the stick approach. He said he did not want to go into Wollesen's personal life but made it perfectly clear to Wollesen that he knew all about their affair.

308. I can even agree with Wollesen that the timing of the interrogation could not have been worse for him. What father would not be preoccupied when his daughter was about to be married? Wollesen was on vacation for that purpose (RX 14, p. 2). Wollesen told Pelham that, 'his mind was worried about weddings and people.' Pelham returned Wollesen back to the mark and told him in a strong voice, '...I need an answer.' (RX 14, p. 4).

309. There is no doubt in mind that Pelham intimidated Wollesen into what little information Wollesen gave and if this were a

criminal case, the 'confession' would be thrown out of court. However, all of this does not add up to discrimination, just heavy handed tactics. I can make no inferences whatsoever from this final interrogation which help Wollesen's case."

OTHER ISSUES:

There are other issues in the "facts" reported by the Judge that do not represent the whole testimony for the case. Many testimonies stated by the Judge were over turned by the same people when asked specific questions. Therefore, if there is any further doubt that FPC was discriminating against Mr. Wollesen and Ms. Collins, I will be happy to show exact issues and points when given time and the Transcript of the Hearing testimony. We could not afford to purchase a copy of the transcript, therefor I am unable to give exact quotes.

Please give this the attention it deserves. The plant in Florida is still very questionable as far as safety and security. Many of the problem come from persons like Mr. Beard, Mr. Peet, Mr. Ray Yost, Mr. Steve Chernenko and Mr. Kelly. Refer to:

Para. 137, Page 33:

Yost never quite understood what Wollesen perceived to be the problem with the NGRC [sic, was PRC]

Here Mr. Yost was not even referring to the right group.

Para. 246, Page 49 and continuing to 50:

"In February of 1991, Chernenko served as an Audit Team Leader...During the course of that particular audit, Mr. Wollesen handed Mr. Chernenko a document of 27 pages of information (TR 1995). The information was difficult to decipher. It was not in a usable format. Chernenko could not present it to management because, in some cases, it didn't make sense. However, after reviewing it with Mr. Wollesen, six items were identified on problem reports (TR 1996)."

Fact shows that Mr. Chernenko could not review criteria, procedures and determine that the cited violations were in fact violations.

This package was sent to the NRC and they issued a violation. Mr. Beard sent a letter to the NRC because he did not feel the violation was correct; again the knowledge of FPC higher levels of management came out.

Para. 163, Page 36:

"Pete denied that he had any conversation with Mr. Callahan about seismic requirements, or laughing about such requirements. Peet said Callahan was removed within 24 hours of the pre-audit conference (TR 1584)".

Why was Mr. Callahan removed? I was there when Mr. Peet laughed at Mr. Callahan's reciting the Seismic requirements. I also understand

why Mr. Peet would laugh at the requirements. Mr. Peet did not know the subject matter of the audit, even though Mr. Peet was the Audit Team Leader.

Para 156, page 35:

"Around April 18, 1991, Peet overheard Wollesen on the telephone talking about the sale of shoes. Peet was concerned that Wollesen was not doing his work (TR 1544)".

The conversation about shoes was not the sale but the requirement in the "AI" Series procedures that I was required to finish with Mr. Gene Beall the Nuclear Safety Specialist. The topic of shoes was a point brought up by the PRC Chairperson and needed resolution; not sales and no sales were ever conducted.

Other testimony in the Transcript show that Mr. Peet mislead readers of his documents.

Mr. Kelly stated two testimonies for the same topic:
Refer to Para.(s): 190, page 41 and 196, page 42:

190: "...It was clear to Mr. Kelly that Ms. Collins was doing business for a profit and advertising on the premisses (TR 1718)..."

196: "...When Kelly saw the Collins business card on the bulletin board, he had no suspicion that Collins was engaging in a for profit business on the premisses...."

Two different view points in the same Judge's report and the Judge choose to use the second in his evaluation of his conditions. If he had chosen the first, his decision would have been for Wollesen/Collins. Should he have taken either? What is the credibility of Mr. Kelly?

A review of the transcript will reveal that the Judge stated to the Attorneys that only 40 pages of brief would be accepted from each attorney. FPC's attorney submitted 90 pages for each claimant or a total of 180 pages or 140 pages over the Judge's conditions. Why did the Judge allow such overage? To me the overage confused the Judge to decide for FPC, even though a review of the Judge's conditions for discrimination were met in the Judge's report.

Please give this the attention needed; we need the help but more over all nuclear workers need your help!

Sincerely,


Edward S. Wollesen

computer and the E-Mail system to send out notices that chicken dinners were available. Elaine Rubio, who worked in her department for Collins' supervisor, Terry Kamann, sold burritos. She would make them at home and bring them in along with all of the side dishes that accompanied burritos. She would call from the guard house and ask for a couple of electricians to come down to the guard house and help her carry the food. Rubio would take orders throughout the day on her phone in her office and people would stop by and pay her. Rubio was in business until about November of 1990. Their supervisor, Terry Kamann, knew about Ms. Rubio's activities because he ate her burritos. Collins was not aware of either Gwaltney or Rubio being disciplined for their private business activities (TR 504-507). Collins said Rubio was disciplined at least a dozen times for her personal use of the telephone. Out of an 8-hour work day, Rubio worked at least 5 hours on personal business (TR 527).

31. Terry Kamann, Collins' immediate supervisor, also had a for-profit business on the premises; he sold craft products (TR 509). Kamann's wife owns a craft shop in Ozello where they live. Periodically, Kamann would bring in crafts to the office to sell to the workers at the Training Center. Kamann would set up his display in the lobby, and Collins heard that Kamann's supervisor, Larry Kelly, asked Kamann not to do that anymore, and he thereafter sold crafts only from his office. Collins observed Kamann selling crafts from his office. Collins' office was immediately next door to Kamann's office, and she named a number of individuals who purchased items from Kamann. She also observed Rubio selling her burritos. Mrs. Kamann's gift shop is called Ozello Keys Winding Trail Gift Shop. One of the type of items that is sold by the gift shop, and sold by Kamann on Florida Power premises, was a crocheted butterfly admitted into evidence as claimant's exhibit 77 (TR 509-512).

32. Delores Stark sold silk flowers on Florida Power premises. She would take orders, and then make the arrangements or corsages or boutonnières. Collins saw Stark work on the arrangements during work time, and then people would pick them up on Florida Power premises. Terry Kamann was her supervisor (TR 629-631).

33. On February 4, 1991, Collins purchased crocheted butterflies from Terry Kamann. She purchased 50 butterflies for \$37.04 (CX 39). Collins used the crocheted butterflies as inexpensive gifts for her Pleasure Company customers. Collins told Kamann why she was purchasing them. The purchase of the butterflies was made during work hours, at approximately 10 o'clock in the morning in Terry Kamann's office at the Florida Nuclear Power Training Center. Kamann was aware of her business, the Pleasure Company, as early as October of 1990 (TR 513-518). Kamann was aware of the nature of the products sold by the Pleasure Company because Kamann saw a catalog. According to Collins,

July 1991 (TR 854). Had management believed Jeff Peet's evaluation of May 21, 1991, Stevens would not have expected to have been certified. He would have expected some remedial training to get up-to-speed (TR 857).

John Pelham

58. John Pelham is a corporate security specialist at Florida Power Corporation. In his experience at Florida Power, Pelham was not aware of anyone conducting a for-profit business at Florida Power other than Mr. Wollesen and Ms. Collins (TR 859).

Terry A. Kamann

59. Kamann is a nuclear training control supervisor at the Training Center, and he has been employed by Florida Power for 3-1/2 years. He supervises the clerical staff (TR 864, 865). Prior to May 10, 1991, the clerical staff included Bonnie Collins. Kamann and his wife are directors of a gift shop known as Ozello Keys Winding Trail Gift Shop, Inc., said shop dealing in all manner of crafts. He has sold crafts on Florida Power premises. Kamann identified CX 77 as a crocheted butterfly refrigerator magnet. He has sold like items on Florida Power premises. In fact, he sold an order of numerous crocheted butterflies to Bonnie Collins. Kamann identified CX 39 as a canceled check from Ms. Collins to him in the amount of \$37.50 for the butterflies. That transaction was negotiated and consummated on Florida Power premises. The transaction occurred on February 4, 1991, which was during a time in which he was Ms. Collins' supervisor (TR 865, 866). Kamann sold items to other Florida Power employees on Florida Power premises during company time. Collins was aware of the sales. Kamann testified that these activities were not in violation of Florida Power Company policies (TR 868). While he did use a Florida Power Xerox machine for his own personal affairs, he used his own paper, and he felt this was not a violation of company policy (TR 869).

60. Mr. Kelly told Kamann to remove centerpieces that he brought in and put in the lobby when the building was new and there was no decor. Kelly said that he felt it was inappropriate because there was a business card in the items with Kamann's wife's name on it (TR 870). After Kelly told Kamann to remove the centerpieces, Kamann put them on his desk, and on two occasions, sold items. Collins was aware that he was selling items from his office (TR 871).

Percy M. Beard, Jr.

61. As of May, 1991, Mr. Beard was Senior Vice President for Nuclear Operations, Florida Power Corporation, a position he held since December of 1989 (TR 884). In his position, Beard is responsible for the overall operation of the nuclear plant, including the training, engineering and maintenance (TR 886). He

Had the business been an Avon business or a jewelry selling business, they probably would have still been fired without progressive steps (TR 962).

70. Neither Mr. Hickie nor Mr. Kelly informed Mr. Beard that other company employees were conducting for-profit businesses on Florida Power premises on company time as of May 10, 1991. For example, Mr. Beard did not know about Avon products being sold on the premises (TR 963). Beard did not know that Terry Kamann brought in materials from his wife's business and sold them out of his office (TR 964). Mr. Beard was not aware of any investigations with regard to these other businesses. Beard believed Mr. Hickie told him that Wollesen was engaged in the Pleasure Company for about a year (TR 968). In reviewing CX 77, Mr. Beard was surprised that Terry Kamann sold an item similar to CX 77 at the Training Center (TR 970).

71. There are some circumstances when personal computers and fax machines can be used by Florida Power employees, but not on company time, and not for a personal for-profit business (TR 976). The only company asset Wollesen and Collins used improperly was the computer (TR 980).

72. Mr. Beard testified that the nature of the Collins/Wollesen business was one that could bring discredit to the company if disclosed to the public, but he believed that had they been conducting an Avon business, he still would have fired Collins and Wollesen without warning them (TR 986). During Mr. Beard's tenure at Florida Power, he could recall only one other person being terminated without going through progressive steps. This person was discharged for violation of company policy for buying an appliance on credit (TR 988). Beard was not aware of anyone else who was terminated for engaging in an outside for-profit business with company assets (TR 989). The philosophy of progressive discipline is part of company policy, but progressive discipline is not mandatory (TR 1007). If it is a serious offense, the management is not restricted to progressive discipline (TR 1008).

73. Beard testified that prior to May 10, 1991, there were numerous ways that an employee at Crystal River Unit 3 could have reported a nuclear safety concern. As to his personal philosophy, he felt that there was no reason not to surface all problems. Beard stressed the identification of problems (TR 1018-1020). It is Beard's understanding that, in comparison to other plants in the United States, Crystal River submits more reports than the average. Crystal River's threshold for reporting is lower than others (TR 1024).

74. At the time of the merger of the audit and surveillance groups in late 1990, Beard was aware that Mr. Wollesen's position was one of two positions to be abolished. Wollesen was transferred

consistent with company policies and past practices. In discharging Mr. Wollesen, Hickle relied on information provided by Mr. DeLonzo. DeLonzo thought that if the circumstances proved to be correct (concerning the Pleasure Company business on Florida Power premises), it was a dischargeable offense (TR 1174). Just to be sure, DeLonzo called the Vice President in Charge of Human Resources, George Rickas, and after that conversation, DeLonzo did not change his mind. The input Hickle received was that the circumstances constituted a dismissable offense based upon two violations of company policies: conflict of interest, and use of company micro-computers (TR 1175).

97. Hickle reviewed and relied upon RX-7 and RX-8 prior to recommending that Wollesen be terminated. They are entitled "Conflict of Interest" (Company Policy Number 1), and "Security" (Company Policy Number 5), respectively (TR 1176, 1178).

98. Hickle said that after Yost met with Pelham, Yost felt that disciplinary action was warranted. They determined they would schedule an interview with Wollesen to see if there were extenuating circumstances. Pelham and Yost would be involved in the interview. Hickle didn't want the interview to be compromised, therefore, it would be close in time to the Bonnie Collins interview (TR 1181).

99. Concerning Wollesen's exit interview, the only instructions Hickle gave Pelham were to ask Wollesen if he had open safety issues. Hickle was not present during Wollesen's interview (TR 1182). After the interview, Hickle talked to Ray Yost at length. Hickle relied on what Yost told him in terminating Wollesen. Yost said that Wollesen admitted he was involved in the Pleasure Company and several other businesses. As Hickle recalled, Wollesen was not specifically asked about the E-Mail transmittals (TR 1184). Based upon Hickle's conversations with Yost, Hickle's belief was that Wollesen did not have open safety issues.

100. Yost told Hickle that, prior to the interview, Wollesen called Yost aside and asked to talk with him privately. Wollesen told Yost that he had been contacted the day before by someone from the NRC (TR 1186). Yost told him to answer questions from the NRC honestly.

101. Hickle then talked to Mr. Beard. Hickle communicated the results of the interview to Mr. Beard by telephone, and sought his concurrence in dismissing Mr. Wollesen; Beard gave his concurrence. Wollesen was fired for violating company policies; specifically, the conflict of interest and security policies (TR 1187).

102. RX-25A, Hickle's letter to Mr. Beard, accurately outlines the reasons for discharging Mr. Wollesen (TR 1189). At the time of Wollesen's termination, Hickle had no open complaints, problem

documentation and carrying documentation away from Training (TR 1405). Some time later, Yost's manager, Dan Kurtz, brought the same information to his attention. Yost met with Wollesen to find out why he was at the Training Center, and to let him know that while he was at the Training Center, it would be perceived he was carrying out audit activities. Yost instructed Wollesen not to go to training unless he had some stated business there either as an audit function, surveillance function or personal training (TR 1406, 1407).

127. Referring to page 3 of CX 29, Yost prepared another memo dated May 3, 1991. Yost received information from various team leaders, and more specifically from Bruce Hickie, that Wollesen had been observed conducting what appeared to be non-audit related activities, and Yost was asked specifically by Hickie to talk to Wollesen and get an understanding of what Wollesen was doing, and if it was non-Florida Power Corporation business, that Wollesen was to cease those activities. For example, Jeffrey Peet complained to Yost that Wollesen had been using the fax machine for non-Florida Power business. Wollesen more or less concealed the information coming over the fax machine. Also, Bruce Hickie overheard a conversation wherein Wollesen was in a discussion with non-Florida Power personnel, for what reason he didn't know (TR 1409-1411).

128. As of May 3, 1991, Mr. Yost did not have specific information regarding Mr. Wollesen being engaged in outside business activities, with the exception that he knew Wollesen was involved in the sale of shoes (TR 1413). In reviewing the brochures for the Pleasure Company, RX 4 and 4A, Yost had not seen the brochures until May 10, 1991. Yost had no information on or about May 3, 1991, that Wollesen was involved in the Pleasure Company (TR 1414).

129. On May 3, 1991, Wollesen told Yost that he was not actively marketing products on Florida Power premises, but certain people had purchased pool chlorinators and he had tried to respond to their questions. He tried to minimize his involvement. Yost told him that, regardless of his level of activity, engagement in the activity was prohibited by company policy, and that if it continued, it would have the severest of consequences on his employment with Florida Power. Wollesen said that he understood (TR 1418).

130. Sometime after his meeting with Wollesen, Yost told Bruce Hickie what Wollesen had said (TR 1419). Yost had another meeting with Wollesen between May 3 and May 10, 1991, but he was not sure of the date (TR 1419). The meeting was in reference to a manpower request to provide support for Mr. Rossfeld. Based on several criteria, Dan Kurtz and Yost felt that Wollesen was the best person for the job, but they did not want to assign it to Wollesen without his consent. So, Yost personally called, and there was a meeting between Kurtz, Wollesen and himself. Wollesen had a favorable

136. During the time Wollesen worked for Yost, Wollesen discussed what he perceived to be problems. One issue centered on the calibration program requirements, and another issue centered on the use of a document by the NGRC (Nuclear General Review Committee) (See TR 1424, 1425). Wollesen believed any instrument that didn't have a calibration sticker was not suitable for use in the plant. They discussed calibration status using mechanisms other than calibration stickers (TR 1442). It was obvious to Yost that Wollesen felt strongly that there was a problem. Yost challenged Wollesen: to document the problem, to site criteria being violated and to specifically demonstrate the problem. Wollesen was unable to do so (TR 1445).

137. Yost never quite understood what Wollesen perceived to be the problem with the NGRC. They had an unofficial notebook which contained some documents used as guidance or quick reference which was not controlled. Wollesen believed it needed to be controlled. Similar to the instrument calibration conversation with Wollesen, Yost told him to identify the established criteria, and specifically state how that criteria was being violated.

138. In Yost's opinion, Mr. Wollesen's performance as a member of the audit team was not adversely affected by bringing his concerns to Yost's attention. (TR 1446). Neither of these conversations played a part in Yost's recommendation that Wollesen be terminated.

139. Yost was unaware that Wollesen had been referred for psychological evaluation in 1987. Yost did not receive input from Joe Lander or Jeff Warren prior to recommending that Wollesen be terminated.

140. Yost has never conducted a for-profit business outside of his employment with Florida Power Corporation, nor has he observed other employees of Florida Power conducting a personal for-profit business while at work with Florida Power (TR 1447).

141. Each employee at Florida Power is instructed that he has an obligation to ensure that the plant is operated in a safe manner; that is, personal safety, radiological safety, and to report incidents of violations of those kinds of standards. During the time that Wollesen worked for Yost, Wollesen was never reprimanded because of voicing concerns to Yost. Yost never threatened Wollesen as a result of their discussions about the instrument calibration stickers or the NGRC (TR 1451).

142. Mr. Yost identified CX 28 as an audit evaluation of Mr. Wollesen that Yost requested, dated April 26, 1991. This evaluation played no role in Yost's recommendation to terminate Mr. Wollesen (TR 1470).

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the Training Center (TR 1651). Prior to her termination, Kelly had no knowledge that Terry Kamann directed Ms. Collins to hide a controlled manual from the EOF cabinet during a drill that occurred at the EOF (TR 1652).

177. Kelly testified that, before terminating Ms. Collins, he saw a pink business card on the bulletin board which depicted a lady who appeared scantily clad. He told Mr. Kamann to take the card down, and had Mr. Kamann tell Bonnie Collins, whose name appeared on the card, not to put the card up again (TR 1654). The first time Kelly knew that Collins was using Florida Power assets in furtherance of the Pleasure Company was when her E-Mail messages were pulled by Mr. Pombier. The first time Kelly knew that Collins was in business since October of 1990 was when he saw the index from her computer disk on May 7, 1991 (TR 1657, 1658).

178. On one occasion, Kelly came into the lobby and saw flower arrangements with a price tag on them. When he found out that Mr. Kamann had placed the flowers in the lobby, Kelly told Kamann to remove the flowers because it wasn't appropriate (TR 1658). Kelly was not aware of other for-profit businesses on Florida Power premises.

179. Kelly was familiar with the progressive disciplinary system, however, he felt that Ms. Collins' offense was serious, that it was extensive and that it occurred over a long period. Her extensive use of company resources, and the nature of the product being a potential embarrassment to Florida Power Corporation, added up to terminating Ms. Collins (TR 1661, 1662).

180. The first time Kelly spoke to Bruce Hickle about the Pleasure Company and Ms. Collins' and Mr. Wollesen's involvement was on May 9, 1991, in John Pelham's office (TR 1664).

181. Mr. Kelly knew Ed Wollesen. He's not sure how they met, but he saw him around the plant. Kelly had no knowledge of Wollesen being referred for psychological evaluation in 1987 (TR 1667). He had no knowledge of Mr. Wollesen's responsibility for the PM-200 program, and he had no knowledge of Mr. Wollesen writing a burnout memo to Mr. Jeff Warren. He had no knowledge of what Mr. Wollesen was doing on the job (TR 1668). Kelly had no knowledge, prior to terminating Ms. Collins, about Mr. Wollesen making complaints of safety violations, irregularities, violations of the Nuclear Regulatory Commission, IMPO guidelines, federal laws, state laws or Florida Power policy and procedures. The only involvement that Kelly had in Mr. Wollesen's termination was informing Bruce Hickle of what his investigation had uncovered (TR 1669).

182. Kelly testified that, even though Collins was using her own disks, she was using the company computers for a for-profit business. Most of what he uncovered was activity all through the day, at numerous times during the day, not just during her lunch hour. She shouldn't have been using the company computer for a

for-profit business at any time (TR 1673).

183. Kelly testified that it was a common practice for contractors to put their logos and phone numbers on hats, coffee cups, pens and pencils. This was a form of advertising for them (TR 1679).

184. Kelly's initial concern was that the lesson plans might be used for resale to outside contractors for sale to other utilities. This thought triggered Mr. Kelly to initiate an investigation (TR 1683). Mr. Kelly was unaware that Wollesen was working on a paper and researching the paper at EOF (TR 1689). Kelly was not sure when he learned that Mr. Ellsbury approved Wollesen taking one lesson plan. Kelly was not sure if he learned that prior to Wollesen's termination or just after the termination (TR 1690). Kelly did not speak to Mr. Ellsbury prior to the termination (TR 1691).

185. In terminating Ms. Collins, integrity was an issue. In one of the E-Mail messages, Ms. Collins said that, if confronted, she would lie (TR 1693).

186. When Kelly learned that Mr. Kamann brought in two flower arrangements for the lobby of the newly opened building, Kelly did not investigate Kamann's E-Mail to see if he was conducting business on the corporate E-Mail system, he didn't search his disk drive to find out if he was creating documents for the Ozello Keys Winding Trail Gift Shop Corporation on the company computer, and he didn't fire Mr. Kamann (TR 1695, 1696). Kelly heard that Kamann sold some of his crafts to some of the clerical folks that worked for him, and Kelly saw in court that Bonnie Collins purchased knit butterflies in the amount of \$37.50. After hearing Mr. Kamann's sworn statements regarding the sales, Kelly did not ask Mr. Pombier to research the computer to find out the nature and extent of Mr. Kamann's for-profit sales activities at Florida Power Corporation (TR 1697). Kelly became aware of Mr. Kamann's activities during the course of this litigation, and he still has not made up his mind exactly what to do about it. Kelly testified that the circumstances surrounding the Collins case and Terry Kamann's sales were substantially different (TR 1700).

187. Kelly was aware that Delores Stark, who works for Terry Kamann, made silk flower arrangements. Kelly asked around and understands that Stark has never made flower arrangements on Florida Power time, but she did bring some in and deliver them to Florida Power employees. Kelly did not know if she sold them on the premises. Kelly did not look into her E-Mail system because he felt he had all of the information. It was his understanding that she delivered silk flower arrangements a couple of times (TR 1700, 1701).

188. Kelly had no information regarding Sam Mansfield selling NUSKIN products on the premises until it came up during this

investigation. Kelly went to see Sam Mansfield and asked him about it, and Mansfield said that he brought in a magazine on one occasion and had it in his desk and took it back home. Mansfield said that he did not sell anything at the Training Center. Kelly had no reason not to take Mansfield's word because he had no information to the contrary. He did not pull Mansfield's E-Mail or look at his computer, and he didn't ask Mr. Pelham to investigate (TR 1702).

189. Prior to terminating Ms. Collins, Kelly consulted primarily with Mr. Gary Bolt, and he had a conversation with Mr. Beard (TR 1707).

190. Kelly identified CX 82A as the business card that he saw on the bulletin board around the latter part of 1990 or early 1991. It had Bonnie Collins' name and phone number on it. It was clear to Mr. Kelly that Ms. Collins was doing business for profit and advertising on the premises (TR 1718). Kelly felt the nature of the business was unclear. The card said, "Lovely Lingerie and All Manner of Wonderful Things," and shows a scantily clad woman holding lingerie. Kelly told Mr. Kamann to make sure the card was taken down and not put up again. Kelly did not ask Mr. Pombier to look into Ms. Collins' computer. He did not ask Mr. Pelham to investigate (TR 1719). Kelly didn't feel that any discipline was warranted (TR 1720).

191. When Kelly saw the business card in late 1990 or early 1991, he thought it involved clothing (TR 1739). The first time Kelly knew of a personal relationship between Collins and Wollesen was when he saw the E-Mail (TR 1741). When Kelly saw the shopping list for the Pleasure Company on or about May 7, 1991, Kelly then associated the Collins business card which he saw on the bulletin board on or about November of 1990 (TR 1745, 1746). However, Kelly did not have an idea of how long Collins had been in business until he looked at her computer disks (TR 1747).

192. After Collins' disk was found with all of the Pleasure Company material, Kelly did not think that he had a termination situation. But the disk itself had dates and times when Collins was at work (TR 1751). The disk had the title scratched out. It had previously been used for a lesson plan. Florida Power material had previously been on the disk, and it had been erased and the Pleasure Company information put on (TR 1752). Kelly suspected that Wollesen was involved in the Pleasure Company after he saw a Pleasure Company form sent from Wollesen to Collins (TR 1753). After looking at Collins' computer, the investigation led to Wollesen's computer, and that's when Pombier and Pelham obtained the E-Mail messages (TR 1754). The first time Kelly saw the catalog was May 9, 1991 in Mr. Pelham's office (TR 1756).

193. Kelly was unaware of any person engaging in for-profit business on Florida Power property other than what he discovered during this litigation (TR 1721).

the Victoria School of Dance, Ms. Rubio testified that she was helping them out with their forms. Her daughter went to the studio, and Ms. Rubio volunteered to help (TR 1953). This was not for-profit. Ms. Rubio identified CX 35 as Victoria's School of Dance forms which she worked on at Florida Power during work hours (TR 1968).

Bernard Paul Komara

242. Mr. Komara testified that he is a training inspector for quality assurance and quality control personnel at Florida Power Corporation. He has worked at Florida Power for 13 years. In March and April of 1990, Komara was employed by the quality programs department. He was a Senior Quality Auditor, and his office was located in the Training Center (TR 1971). His duties were to develop and provide training in various areas, and to coordinate training with department personnel on whatever topics were deemed appropriate.

243. Komara identified RX 45A as a memo he generated, the addressee being Victor Hernandez. At the time, Hernandez was the supervisor in the quality audit surveillance section. Wollesen was in the Quality Programs Department in April of 1990 (TR 1972, 1973). He worked for Victor Hernandez. The purpose of generating RX 45A was to review the memo with employees concerning company policy for company computers (TR 1973).

244. Komara identified RX 45B as a completed training record which had been routed back to his area representing Hernandez's section. Wollesen's name appears on the attendance record. The purpose of receiving the attendance record was to verify that training was performed. One of the subjects that was covered by the training was Florida Power's Policy Number 5, Security, Computer Service (TR 1975).

Steven Chernenko

245. Steven Chernenko testified that he has been working for Florida Power Corporation since May of 1982. He is Senior Quality Auditor in the Quality Programs Department, and he has occupied that position since December of 1991 (TR 1989, 1990). Chernenko was certified as an Audit Team Leader shortly after he began his employment with Florida Power Corporation in 1982. He has served as an Audit Team Leader in excess of 25 times (TR 1993).

246. In February of 1991, Chernenko served as an Audit Team Leader, the audit team consisting of Jeff Peet and Ed Wollesen. The audit team was to evaluate two independent review organizations, the Plant Review Committee and the Nuclear General Review Committee. Mr. Peet was responsible for the Nuclear General Review Committee located in St. Petersburg, and Wollesen was responsible for the Plant Review Committee, which is an on-site organization (TR 1994). During the course of that particular

audit, Mr. Wollesen handed Mr. Chernenko a document of 27 pages of information (TR 1995). The information was difficult to decipher. It was not in usable format. Chernenko could not present it to management because, in some cases, it didn't make sense. However, after reviewing it with Mr. Wollesen, six items were identified on problem reports (TR 1996).

247. Mr. Wollesen did not raise issues with Chernenko at the time of the issuance of the final report, nor did he raise issues with Chernenko concerning the way with which his audit was being dealt. Chernenko identified CX 14 as the final audit report (TR 1997). Page 6 contains two of the issues raised by Mr. Wollesen, and they're identified as being non-significant problems. Page 7 contains another problem report originated as a result of the audit activities by Mr. Wollesen (TR 1999). Those were evaluated and determined to be non-significant problems (TR 2000). Chernenko verbally told Mr. Yost how difficult it was to use the original information given to Chernenko by Wollesen (TR 2002). During the course of the February 19, 1991 audit, Chernenko never told Wollesen to ignore issues. Chernenko has never been directed to cover up or ignore problems which he found during the course of an audit (TR 2003). Chernenko has never feared retaliation if he raised problem issues (TR 2007).

Polly Hickle

248. Polly Hickle testified that she is employed by the Citrus County School Board as a Program Coordinator for the Speech Language Impaired Program and the Pre-Kindergarten Early Intervention Program (PHD, p. 4). Mrs. Hickle is certified as a speech pathologist by the State of Florida. She has been employed by the Citrus County Board of Education for 10 years.

249. Mrs. Hickle married Bruce Hickle in August of 1974, and they live together as man and wife (PHD, p. 5). In November of 1990, Mrs. Hickle was invited to attend a lingerie party by a friend of hers, Judy Fowler. The party was held at Judy Fowler's home in Crystal River (PHD, p. 6). Before going to the party, she told her husband that she was going to a lingerie party and that was all. There were approximately 12 people there, and the presentation was made by a woman named Bonnie. Later, Polly found out it was Bonnie Collins (PHD, p. 7). The party lasted a couple of hours, and it was similar to a Tupperware Party. Some products were demonstrated, and then people filled out order forms on what they wanted to purchase. Polly Hickle ordered some products and signed an order form (PHD, p. 8). Polly Hickle paid for the products with Master Card. Polly Hickle has not seen Bonnie Collins since that evening in November of 1990, nor has she had conversations with Bonnie Collins (PHD, p. 9).

250. After the party, she went home and did not discuss the party with her husband, Bruce Hickle. She did not tell Bruce Hickle that she had purchased products. She subsequently did

Whether Complainants Engaged in Protected Activity and Whether
Respondent Was Aware of Said Activity

Edward Wollesen

273. I find that Edward Wollesen engaged in protected activity. I base this conclusion on his testimony, and on the testimony of others, that Wollesen reported safety and quality problems internally to his superiors. He also conversed with an investigator for the Nuclear Regulatory Commission (NRC) the day before he was fired.

274. Wollesen was most persistent in his complaints about the instrument calibration or the PM-200 program. I predicate this finding on Wollesen's testimony and various exhibits. (TR 153-178 and CX 73 - CX 75.)

275. I find that at the time Wollesen was terminated, his supervisor, Ray Yost, (a) was aware of Wollesen's complaints about the calibration program (see paragraph 136); and (b) was an individual directly involved in terminating Wollesen (see paragraph 135).

276. Also, the day before Wollesen was fired, he spoke with Oscar DeMiranda, an investigator for the NRC (See para 18). Ray Yost was aware of the NRC contact. (See paras 20, 27, and 132.) Pat Beard and Bruce Hickie were also aware of the contact. (See paras 67, 100, 115, and 134.)

277. Yost recommended to Mr. Hickie that Wollesen be terminated (para 135). Hickie decided to terminate Wollesen and sought Pat Beard's concurrence (para 101). Beard, as Vice President of Nuclear Operations, was ultimately responsible for firing Wollesen. Both Hickie and Kelly recommended terminating Wollesen, and Beard concurred (paras 65, 67).

278. The above considered, I find Edward Wollesen engaged in protected activity and Respondent was aware of said activity.

Bonnie Collins

279. Collins argues that she engaged in protected activity based upon events which occurred a month or two before she was fired. Collins claims her supervisor, Terry Kamann, told her to hide from NRC inspectors an out of date manual (TR 547, 548). Collins testified that the only person she complained to about hiding the manual was Kamann himself (TR 643). Her "complaint" to Kamann, if true, would constitute protected activity.

280. However, I am not persuaded that this event took place for several reasons: a) Collins went directly to Larry Kelly,

Kamman's supervisor, on a prior occasion when she felt Kamann was incorrectly prioritizing her work. Kelly took action and Collins was not disciplined in any way. (See paras 41, 198). Collins failed to explain why she was afraid to tell Kelly about the outdated manual. (b) Terry Kamann denied the incident (TR 1769). (c) There is evidence from co-worker, Elaine Rubio, that Collins did not fear Kamann (TR 1929), and (d) Rubio, who worked about four feet away from Collins, knew nothing of the incident. (See para 237). For these reasons, I find Collins has failed to show she engaged in protected activity concerning the alleged manual incident.

281. I note Collins has not alleged other activities and/or complaints which would constitute protected activity. (See para 41). Therefore, standing alone, Collins cannot make a prima facie case under the ERA. However, Collins travels under another theory, which, if true, is viable and sustainable under the ERA. Collins argued at trial: (a) Wollesen was a whistleblower, (b) FPC wanted to get rid of him because of his whistle-blowing activities; (c) if FPC fired Wollesen under the pretext that Wollesen was conducting Pleasure Company business on FPC premises, using FPC resources, FPC would have to fire Collins too since she was doing the same (TR 24, 26).

282. Thus, Collins' case rises or falls depending on the merits of Wollesen's claim. If Wollesen makes out a case under the ERA, it would be proper to review the evidence further to determine whether Collins' theory is supported. If Wollesen's case fails, there will be no further inquiry on Collins' claim.

Whether Claimant Wollesen's Protected Activity Was the
Likely Reason He Was Fired by FPC

283. Respondent alleges that Complainant Wollesen was fired for violating company policy number 1 entitled, "Conflict of Interest" and company policy number 5 entitled, "Security." (See TR 1176, 1178.) Essentially, FPC claims Wollesen was fired for conducting a private, for-profit business on company time, on company premises, using company resources, i.e., company computers. Wollesen claims he was fired for engaging in protected activity and raises what he believes to be circumstantial evidence to support his theory which will be examined below.

Personal, For-Profit Business on Florida Power Premises

284. Most troubling for FPC would be disparate treatment of Wollesen; i.e. that the individuals responsible for firing Wollesen were aware of others engaging in personal, for-profit business on FPC premises, and allowed them to do so with immunity, while firing Wollesen for the same activity. Before reviewing evidence in this regard, it is important to establish the identity of the individuals responsible, either directly or indirectly, for the

decision to terminate Wollesen. Note that I am excluding the investigator, John Pelham, since there is no evidence whatsoever that he had input in the decision to fire Wollesen. Likewise, I am excluding Jeffrey Peet. While Peet may have suspected Wollesen was conducting a for-profit business on FPC premises, there is no evidence that he either directly or indirectly participated in the decision to fire Wollesen. I am also excluding Terry Kamman. While he exercised poor leadership in conducting his own flower and craft sales (paras 59, 209), and thus set a bad example for his staff, there is no evidence that Kelly knew the extent of his business or that Kamman had input in the decision to fire Wollesen. I find the evidence shows: Wollesen's supervisor, Ray Yost, recommended to Bruce Hickie that Wollesen be terminated (TR 1436, 1437); Bruce Hickie, Operations Manager, Crystal River 3, recommended to Pat Beard that Wollesen be terminated (TR 1176, 1178); Pat Beard, Senior Vice President for Nuclear Operations, was ultimately responsible for firing Wollesen (TR 919, 920); Larry Kelly, Director of Nuclear Operations Training Center, recommended to Beard that Wollesen be fired (TR 919, 920) and, finally, before Hickie and Kelly recommended to Beard that Wollesen be terminated, they consulted with Jim DeLonzo, Manager of Human Resources (TR 1175). Therefore, I find the following individuals responsible for the decision to terminate Complainant Wollesen: Ray Yost, Bruce Hickie, Larry Kelly, Jim DeLonzo, and Pat Beard. If any of these individuals discriminated against Wollesen for conducting a personal for-profit business on FPC premises while others operated with immunity, this would constitute circumstantial evidence in Wollesen's favor. Also, if the evidence shows that these same individuals were aware of Wollesen conducting a for-profit business on company time (including Pleasure Company business), and did nothing about it until an event took place which could be characterized as protected activity on Wollesen's part, and then fired Wollesen on the pretext of conducting Pleasure Company business, this too would constitute circumstantial evidence in Wollesen's favor.

285. As of November, 1990, Wollesen either had engaged or was engaging in a whole host of moonlighting activity while employed by FPC. Rather than review here his private business activities, I accept as true his testimony in this regard and incorporate by reference paragraph 8 above. Wollesen's testimony that he did not perform outside business activities during the time he was required to be working for FPC is doubtful, especially in light of the evidence concerning the Pleasure Company. However, the case does not hinge on Wollesen's credibility on this point. What is important is what did the named individuals, Yost, Hickie, Kelly, DeLonzo, and Beard know and when did they know it?

286. After carefully reviewing the evidence, I find: Yost was aware that Wollesen was involved in the sale of shoes (para 128); that on or about May 3, 1991, Yost was aware Wollesen was answering questions about pool chlorinators while on the job (paras 19 and 129). There is no evidence that Yost was aware of

and we had what Jeff Peet and some of the audit people had observed." (TR 1371)

Kelly saw a pink business card on the bulletin board which depicted a lady scantily clad (para 177). Kelly identified CX 82A as the business card that he saw in the latter part of 1990 or early 1991. It had Bonnie Collins' name and phone number on it, and it was clear that Collins was doing business for profit and advertising on the premises. Kelly felt the nature of the business was unclear. He thought it involved clothing (TR 1739). Kelly told Collins' supervisor, Terry Kamman to make sure the card was taken down and not put up again (para 196).

On another occasion, Kelly came into the lobby and saw flower arrangements with a price tag on them. When Kelly found out that Kamman placed the flowers in the Lobby, Kelly told Kamman to remove the flowers because they were inappropriate (para 178).

Kelly was unaware of other for-profit businesses on FPC premises (para 178, 193).

DeLonzo did not testify. Hickle and Kelly consulted with DeLonzo prior to recommending to Beard that Wollesen be fired. DeLonzo felt that if Wollesen was conducting Pleasure Company business on FPC property, then that was a dischargeable offense (TR 1174). Under the circumstances, any and all knowledge which Hickle and Kelly had about others or Wollesen engaging in personal, for-profit businesses on FPC premises will be imputed to DeLonzo.

Beard had no negative information about Wollesen prior to learning about the Pleasure Company in late April, 1991 (para 62). Beard did not know that FPC employees were conducting for-profit business on company premises prior to learning about the Pleasure Company (para 70).

287. The evidence shows that neither Ray Yost nor Bruce Hickle were aware of others conducting a for-profit business on FPC premises (paras 103, 140). Therefore, I find that Yost and Hickle did not discriminate against Wollesen on the basis that they allowed others to operate personal for-profit business on FPC property and not Wollesen.

During the time Wollesen worked for Yost, Wollesen engaged in protected activity regarding the calibration program requirements (see para 136). It is most unlikely that if Yost planned to discriminate against Wollesen for this protected activity, that Yost would make a speech praising Wollesen on April 22, 1991, Wollesen's 10th year with the company (para 5).

There is evidence that before May 3, 1991, Yost knew Wollesen was involved in the sale of shoes (TR 1413) yet he overlooked it and did nothing until on or about May 3, 1991, when Hickle told Yost to find out what Wollesen was doing and to tell him to "knock it off"

301. Wollesen has not offered evidence that other similarly situated FPC employees received or were offered progressive discipline. The only other person similarly situated was Bonnie Collins, and she also was fired.

302. Yost articulated legitimate reasons why he recommended that Wollesen be terminated (para 135). Finally, Beard, Hickie, and Kelly explained progressive discipline was company policy but not mandatory and could be disregarded for serious offenses (paras 72, 104, 179).

303. For these reasons, I find that there is no evidence to suggest that FPC management discriminated against Wollesen by not offering progressive discipline.

Wollesen's Final Interrogation

304. I listened to the tape recording (RX 16) of John Pelham's interrogation of Ed Wollesen on May 10, 1991, at 1:45 p.m. with Ray Yost present, and simultaneously read the transcript of the tape (RX 14).

305. Initially, I note Wollesen said that during the process of his employment at CR3 he brought up certain issues during audits but he did not feel as of May 3, 1991, that they were safety concerns. They were concerns (RX 14, p. 1). Also, a person named, Oscar LNU (last name unknown) from the NRC contacted him May 9, 1991, about 8:15 a.m. Wollesen did not know why the NRC would call him at home (RX 14, p. 2). Oscar LNU asked Wollesen if he ever felt intimidated and Wollesen said, "Yes" (RX 14, p. 3). Oscar LNU was concerned about a letter which Wollesen had written (RX 14, p. 3).

306. Wollesen admitted being a distributor for the Pleasure Company (R 14, pp. 7, 8, 12) and discussed the product line (RX 14, pp. 11, 12). that he had one employee, that she made some sales, and that he was involved with the company for about a month (RX 14, p. 13). Wollesen said the items in the Pleasure Company Catalog should not be associated with FPC at all (RX 14, p. 17), however, admitted to designing a sheet for Pleasure Company use and transmitted it over the computer to Bonnie Collins (RX 14, p. 17).

307. I used the word, "interrogation" and not "interview" in this section purposely because that is exactly what took place. John Pelham used scare tactics because as he said, "he wanted answers" (RX 14, p. 40), he wanted Wollesen, "to tell the truth" (RX 14, pp. 5, 8, 9). John Pelham was a witness in court, and I would describe him as a large, imposing gentleman. At times, Pelham intimidated Wollesen, especially by inquiring into Wollesen's personal relationship with Bonnie Collins (RX 14, pp. 11 and 12). Pelham used the carrot and the stick approach. He said he did not want to go into Wollesen's personal life but made it perfectly clear to Wollesen that he knew all about their affair.

308. I can even agree with Wollesen that the timing of the interrogation could not have been worse for him. What father would not be preoccupied when his daughter was about to be married? Wollesen was on vacation for that purpose (RX 14, p. 2). Wollesen told Pelham that, "his mind was worried about weddings and people." Pelham returned Wollesen back to the mark and told him in a strong voice, "... I need an answer." (RX 14, p. 4).

309. There is no doubt in my mind that Pelham intimidated Wollesen into what little information Wollesen gave and if this were a criminal case, the "confession" would be thrown out of court. However, all of this does not add up to discrimination, just heavy handed tactics. I can make no inferences whatsoever from this final interrogation which help Wollesen's case.

The NRC Contact

310. Prior to the beginning of Wollesen's interrogation on May 10, 1991, Wollesen told Ray Yost that he had been contacted by someone from the NRC about safety concerns (para 132, RX 14, p. 2). Wollesen knew what was coming; he had visited Bonnie Collins before the interrogation and she told him she was fired because of her involvement in the Pleasure Company (para 26). Collins told Wollesen she thought he was going to be fired too based upon the questions that were asked about the Pleasure Company (para 44).

311. Wollesen testified that he told Yost about the NRC contact to find out anything else he needed to do for Florida Power in talking with Mr. DiMiranda (para 27). However, it is clear to me, and I so find that Wollesen's revelation to Yost was a veiled threat made to deflect FPC's investigation and/or interrogation; Wollesen reported the NRC contact to Yost because he knew that his termination so close in time to the NRC contact would give the appearance of adverse employment action as a result of the contact. Yost did the right thing; he told Wollesen to tell the NRC whatever they wanted to know (paras 27, 132) and to tell the truth (para 132).

312. By this time, the decision to fire Wollesen was fait accompli. Yost, Hickie, and Beard already had hard evidence on Wollesen's involvement in the Pleasure Company and the final interrogation added nothing (paras 63, 91, 92, 131).

313. For these reasons, I find Wollesen has failed to show a nexus between the NRC contact by Oscar DiMiranda on May 9, 1991, and his termination.

The "Burn-Out" Letter

314. Wollesen testified that he was referred for a psychological evaluation as a result of making an internal safety related report to the plant manager, Paul McKee, in 1987 (TR 210). Wollesen was recommended for psychological evaluation, and the

Document Number
For Identification
"E-MAIL"

To: EWOLLESE
From: C2-2:RYOST
Subject: Rcpt: TEMP. ASSIGNMENT QUEST
Date: 05-03-91 Time: 4:24p

The following message has been read:

To: RYOST
From: SA-2:EWOLLESE
Subject: TEMP. ASSIGNMENT QUESTIONS
Date: 04-30-91 Time: 9:48a

3 indicates Ray Yost Rec'd
the message on May 3, 1991
@ 4:24 PM.
I WAS Terminated much later
llw

For the duration of the temp. assignment, what impact will be on:

- 1) accountability - Will my accountability be with Compliance daily and any time off or other considerations need to be directed to QPD?
- 2) Reporting and Supervisor - In event of questions that normally would be

brought to your attention, should they follow Compliance Department, or be brought to your attention and Compliance attention?

- 3) Office - Personal Items- Should the office be left in a condition as would be for vacation? Will mail be forwarded or should I routinely check

back?

- 4) Open items on NTTS and QPTS. Some of the open items need to be followed and possibly closed soon. The dates can be flexible, however, some follow up activities should be performed and closure of the items. The support that Compliance is giving to QPD is parttime, were any provisions for QPD follow up time to allow for some minor activity follow-up? If we can designate a couple hours per week, this may be ample.

If there are any other details that you find out, as well as these, please let me know.

Thanks.