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Title: COLUMBIA GENERATING STATION:

DISCRIMINATION AGAINST AN
RAISING SAFETY CONCERNS

(b)(7)(C)

FOR

Licensee:

Energy Northwest
P.O. Box 968
Richland, WA 99352-0968

Docket No.: 50-397

Allegation No.: RIV-2006-A-0081

Reported by:

/s/

Kevin L. Pryer, Special Agent
Office of Investigations
Field Office, Region IV

Case No.: 4-2007-015

Report Date: 08/27/07

Control Office: OI:RV

Status: CLOSED

Reviewed and Approved by:

/s/

Darrell B. White, Director
Office of Investigations
Field Office, Region IV

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SYNOPSIS

This investigation was initiated by the Nuclear Regulatory Commission, Office of Investigations, Region IV, on January 8, 2007, to determine if an (b)(7)(C) assigned to the Columbia Generating Station (CGS), Richland, Washington, was the subject of discrimination for reporting a safety concern.

Based on the evidence developed during the investigation, the allegation that an (b)(7)(C) at CGS was the subject of discrimination for reporting a safety concern was not substantiated.

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TESTIMONIAL EVIDENCE

Exhibit

(b)(7)(C)	(b)(7)(C)	CGS	11
(b)(7)(C)		CGS	8
(b)(7)(C)	(b)(7)(C)	CGS	2
(b)(7)(C)		CGS	9
(b)(7)(C)		CGS	12
(b)(7)(C)		CGS	10
(b)(7)(C)		CGS	13
(b)(7)(C)		CGS	7

7c

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DOCUMENTARY EVIDENCE

E-mail from unknown individual to (b)(7)(C) dated August 4, 2006 (Exhibit 3).

Performance Plan of (b)(7)(C) (November 2003-October 2004), dated November 11, 2004 (Exhibit 4).

Performance Plan of (b)(7)(C) (November 2004-October 2005), dated July 19, 2005 (Exhibit 5).

Performance Plan of (b)(7)(C) (July 2005-July 2006), dated September 26, 2006 (Exhibit 6).

Copy of Report of Independent Investigation, dated November 15, 2006 (Exhibit 14).

E-mail from Assistant General Counsel, Energy Northwest, dated July 25, 2007 (Exhibit 15).

Performance Plans of other personnel rated by (b)(7)(C) various dates (Exhibit 16).

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DETAILS OF INVESTIGATION

Applicable Regulations

10 CFR 50.5: Deliberate Misconduct (2006 Edition)

10 CFR 50.7: Employee Protection (2006 Edition)

Purpose of Investigation

This investigation was initiated by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), on January 8, 2007, to determine if (b)(7)(C) (b)(7)(C) Columbia Generating Station (CGS), was the subject of discrimination for reporting a safety concern [Allegation No. RIV-2006-A-0081] (Exhibit 1).

Background

On August 21, 2006, Ronald B. COHEN, Senior Resident Inspector, CGS, RIV, NRC, was contacted by (b)(7)(C) who reported he had been subjected to discrimination for reporting a safety concern.

Specifically, (b)(7)(C) alleged he raised a concern regarding the skill level of an employee hired to (b)(7)(C). He advised he originally raised his concern to (b)(7)(C) CGS, and (b)(7)(C) CGS, with no results. Subsequently, he provided his concern to the company's Employee Concerns Program (ECP) who apparently passed the information to the company's Human Resource (HR) office. (b)(7)(C) noted he knew HR had the information because the (b)(7)(C) made the statement, "I wonder who took this issue to HR." (b)(7)(C) related that when the (b)(7)(C) directly asked him if he went to ECP with the concern, he answered he had. As a result, the (b)(7)(C) "exploded" and threw an object at him (b)(7)(C).

(b)(7)(C) stated he had traditionally been ranked in the top 3 performers out of (b)(7)(C) employees in the (b)(7)(C) at CGS. He alleged that after raising his concern he received a "poor" rating on his last performance evaluation and was ranked last in (b)(7)(C). According to (b)(7)(C) he did not receive a 3 percent pay raise due to the poor evaluation. (b)(7)(C) noted the (b)(7)(C) had recently assumed the position and since that time (b)(7)(C).

On September 11, 2006, a RIV Allegation Review Board (ARB) met and decided to offer (b)(7)(C) an opportunity to participate in the NRC's Alternative Dispute Resolution (ADR) Program in an effort to resolve his dispute with CGS.

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On January 8, 2007, OI:RIV was notified that the licensee had withdrawn from ADR, and the ARB requested OI:RIV initiate an investigation to determine whether (b)(7)(C) had been subjected to discrimination for reporting a safety concern.

Agent's Analysis

Protected Activity

In early to mid 2006, (b)(7)(C) raised a concern over the hiring of a (b)(7)(C) that was to take the position of a veteran employee, with the responsibilities being the (b)(7)(C) at CGS.

(b)(7)(C) reported he verbally raised his concern with (b)(7)(C) directly upon hearing (b)(7)(C) [NFI] had received a promotion from a temporary position to a full-time position. (b)(7)(C) also raised the concern with (b)(7)(C) CGS, and (b)(7)(C) CGS, in addition to formally filing a concern with the CGS Nuclear Safety Issues Program (NSIP).

Management Knowledge

(b)(7)(C) related he and (b)(7)(C) did have a verbal conversation wherein (b)(7)(C) voiced his concern over the hiring of (b)(7)(C) explained he felt obligated to report the concern to CGS management, and he and (b)(7)(C) informed (b)(7)(C) of (b)(7)(C) concern. (b)(7)(C) testified (b)(7)(C) had also informed him of his concerns about (b)(7)(C) experience and subsequent hiring.

Adverse Action

As a result of raising the concern, (b)(7)(C) claims he "subsequently received two very poor performance evaluations and a salary increase that wasn't commensurate with [my] abilities or [my] past history" (Exhibit 2, p. 13).

(b)(7)(C) believes his July 2005-July 2006 annual performance rating reflecting "needs improvement" was a result of his raising the concern about (b)(7)(C). Additionally, (b)(7)(C) believes his quarterly performance rating (July 2006-November 2006) reflects a lower rating as a result of raising the concern in June 2006. (b)(7)(C) also believes his lower annual merit increase in 2006 (1 percent versus 3.5 percent in 2005) was a result of his raising a safety concern.

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Nexus: Was (b)(7)(C) discriminated against for raising a safety concern?

(b)(7)(C) reported his concern about the hiring of (b)(7)(C) in early to mid 2006, to (b)(7)(C) and (b)(7)(C) in addition to reporting it to the NSIP (b)(7)(C) expressed his concern about (b)(7)(C) experience and believed the position required additional qualifications.

(b)(7)(C) began employment as (b)(7)(C) at CGS in (b)(7)(C) testified (b)(7)(C) previous supervisor (b)(7)(C) approached him shortly after his (b)(7)(C) arrival at CGS and informed him he was retiring. (b)(7)(C) explained he was instructed by (b)(7)(C) to determine how to best manage the organization going forward. (b)(7)(C) related he currently rates five employees including (b)(7)(C) did receive higher performance ratings during the previous rating periods (Exhibits 4 and 5). However, (b)(7)(C) testified that when he took over, part of his assessment was that the (b)(7)(C) (b)(7)(C) department, did not do well at performance management, and he put out new expectations dealing with performance appraisals (b)(7)(C) explained he believed the (b)(7)(C) at CGS was "a very family-oriented group," and he "couldn't get that manager to put his employees into a bucket and say you're either exceptional, satisfactory, needs improvement. And that was part of the crux of making a change there" (Exhibit 10, p. 13). (b)(7)(C) previous performance ratings were given by (b)(7)(C) According to (b)(7)(C) ratings were inflated. In fact, (b)(7)(C)

7c (b)(7)(C) indicates that changes in how employees were being evaluated were taking place within the (b)(7)(C) at CGS. (b)(7)(C) rating scale reflected that in the five employees he rated in 2006, none received above satisfactory (Exhibit 16).

AGENT'S NOTE: (b)(7)(C) was the only employee rated by (b)(7)(C) that was also rated by (b)(7)(C) therefore, making any comparison difficult.

(b)(7)(C) testified he based (b)(7)(C) performance rating on written objectives he had developed from items in a Price Waterhouse Coopers audit and from the Cyber Security Program responsibilities at CGS that (b)(7)(C) had in his program management role.

(b)(7)(C) Performance Plan, dated July 2005-July 2006, included a narrative explaining the performance rating was "solely based on performance observed from February 2006 (b)(7)(C) until June 30, 2006 (Exhibit 6, p. 4). The narrative also documented a change in March 2006, at which time (b)(7)(C) was "directed to change his historical direction from a (b)(7)(C)

at Energy Northwest (Exhibit 6, p. 4). The narrative also documents (b)(7)(C) struggles in implementing that directive, and additionally documents (b)(7)(C) shortcomings in communication skills and his failure to complete assigned tasks within the agreed upon deadlines. In a positive note, the narrative does document (b)(7)(C) strong potential for becoming a future leader within the company.

(b)(7)(C) related that merit increases at CGS are calculated based upon the performance of the employee and the value they provide to Energy Northwest. (b)(7)(C) explained that 2006 was the

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first year the CGS management team sat down collectively and discussed performance evaluations ensuring "no one person could slant the performance merit increases one way" (Exhibit 8, p. 8). (b)(7)(C) related the merit increases were previously done more individually and spread out amongst all of the employees. (b)(7)(C) explained the 61 employees of (b)(7)(C) are rated in an attempt to "try and understand the net worth of employees across the organization, and that's a technique that's used heavily in HR functions within the industry" (Exhibit 8, p. 13). (b)(7)(C) indicated (b)(7)(C) ranking in 2006, based on his performance, was in the "bottom part of that" [ranking] (Exhibit 8, p. 13).

(b)(7)(C) testified he received an e-mail (Exhibit 3) from peers at another site on August 4, 2006, describing disturbing comments they heard made by (b)(7)(C) wherein (b)(7)(C) allegedly said, "once he deals with the current (b)(7)(C) there would be an opening in the organization." The e-mail also alleged (b)(7)(C) made comments to the effect that (b)(7)(C) had gone over his head on a security concern, and that would "be the last time this guy does that." Attempts to identify and interview the author(s) of the e-mail were unsuccessful. (b)(7)(C) denied ever making the comments. An e-mail (Exhibit 15) from Energy Northwest Assistant General Counsel (b)(7)(C) documents the unsuccessful attempts to retrieve the e-mail from the Energy Northwest e-mail server.

There is neither testimonial nor documentary evidence to support (b)(7)(C) assertion that he received lower performance ratings as a result of raising the concern about the hiring of (b)(7)(C). (b)(7)(C) provided an e-mail (Exhibit 3) in which it appears (b)(7)(C) may have made disparaging comments concerning (b)(7)(C) raising the concern. However (b)(7)(C) unwillingness to provide the name of the author of the e-mail and the amount of time that has lapsed since the e-mail was sent, provide nothing other than conjecture as to what (b)(7)(C) actually said. Testimony and documentation did provide evidence the (b)(7)(C) at CGS has undergone a change in philosophy in regards to documenting performance of individuals. The division also underwent a change in management personnel over the last 2 years. The major organizational changes appear to have impacted the whole CGS (b)(7)(C) and are not related to (b)(7)(C) raising of a concern.

Conclusions

Based on the evidence developed during the investigation, the allegation that (b)(7)(C) was the subject of discrimination for reporting a safety concern was not substantiated.

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigation Status Record, dated January 8, 2007 (1 page).
2	Transcript of Interview with (b)(7)(C) dated February 5, 2007 (31 pages).
3	E-mail from unknown individual to (b)(7)(C) dated August 4, 2006 (2 pages).
4	Performance Plan of (b)(7)(C) (November 2003-October 2004), dated November 11, 2004 (7 pages).
5	Performance Plan of (b)(7)(C) (November 2004-October 2005), dated July 19, 2005 (5 pages).
6	Performance Plan of (b)(7)(C) (July 2005-July 2006), dated September 26, 2006 (6 pages).
7c	Transcript of Interview with (b)(7)(C) dated April 17, 2007 (10 pages).
8	Transcript of Interview with (b)(7)(C) dated April 17, 2007 (16 pages).
9	Transcript of Interview with (b)(7)(C) dated April 17, 2007 (23 pages).
10	Transcript of Interview with (b)(7)(C) dated April 17, 2007 (18 pages).
11	Transcript of Interview with (b)(7)(C) dated April 17, 2007 (11 pages).
12	Transcript of Interview with (b)(7)(C) dated June 11, 2007 (12 pages).
13	Transcript of Interview with (b)(7)(C) dated June 12, 2007 (13 pages).
14	Copy of Report of Independent Investigation, dated November 15, 2006 (32 pages).
15	E-mail from Assistant General Counsel, Energy Northwest, dated July 25, 2007 (1 page).
16	Performance Plans of other personnel rated by (b)(7)(C) various dates (20 pages).

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