Title: COLUMBIA GENERATING STATION:

DISCRIMINATION AGAINST A (b)(7)(C) FOR RAISING NUCLEAR SAFETY CONCERNS

Licensee:

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

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SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region IV, on August 21, 2009, to determine if a (b)(7)(C) was discriminated against by Energy Northwest's Columba Generating Station (CGS), Richland, Washington, and/or Areva NP, Incorporated (Areva), Richland, Washington, for raising nuclear safety concerns.

Based upon the evidence developed, the allegation that a (b)(7)(C) was discriminated against by CGS and/or Areva for raising nuclear safety concerns was not substantiated.

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DETAILS OF INVESTIGATION

Applicable Regulations

10 CFR 50.7: Employee protection (2004, 2005, 2006, 2007, 2008 Editions) (Allegation No. 1)

10 CFR 50.5: Deliberate misconduct (2004, 2005, 2006, 2007, 2008 Editions) (Allegation No. 1)

Purpose of Investigation

This investigation was initiated by the U. S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), on August 21, 2009, to determine if (b)(7)(C) (b)(7)(C) was discriminated against by Energy Northwest's Columba Generating Station (CGS), Richland, Washington, and/or Areva NP, Incorporated (Areva), Richland, Washington, for raising nuclear safety concerns (Exhibit 1).

Background

On June 2, 2008, the NRC's Allegation Review Board (ARB), RIV convened to review and discuss a complaint of discrimination filed by (b)(7)(C) through his legal counsel, (b)(7)(C) Government Accountability Project, Washington, DC. A copy of (b)(7)(C) complaint, filed with the U. S. Department of Labor (DOL), Case No (b)(7)(C) was forwarded by DOL to NRC:RIV by letter dated (b)(7)(C) In the complaint filed with DOL (b)(7)(C) alleged that he had been subjected to employment discrimination by CGS because of his reputation as a "whistleblower" and for engaging in protected activities.

7C A review of the DOL complaint disclosed that (b)(7)(C) claimed his protected activities began when he reported numerous health and safety concerns to the Department of Energy (DOE) while he was employed as a (b)(7)(C) t for Fluor Hanford, Incorporated (Fluor Hanford) Richland, Washington. Fluor Hanford is a contractor for the DOE at the Spent Nuclear Fuels Project Hanford site. Specifically, (b)(7)(C) reported that he was terminated by Fluor Hanford in (b)(7) for raising nuclear concerns, a protected activity under the Energy Reorganization Act, and subsequent to his termination from Fluor Hanford, he has not been able to secure employment in the nuclear industry.

In the DOL complaint (b)(7)(C) stated that he had applied for at least 21 job postings at CGS during the period of (b)(7)(C) but was not employed because he had disclosed a "wrongful discharge for raising health and safety concerns" on his job applications to CGS. Details of (b)(7)(C) submission of job applications to CGS are outlined in his DOL complaint in paragraphs 41 through 63 (Exhibit 3).

The Office of General Counsel had previously advised on May 29, 2008 that further information would be required in order to determine if (b)(7)(C) discrimination complaint was considered a prima facie allegation and warranted further investigation by the NRC. Subsequently, the OI:RIV interviewed (b)(7)(C) on August 15, 2008 [OI Case No. 4-2008-048F] to obtain clarifying information regarding his nuclear safety concerns and allegation of employment discrimination

5 by CGS. Based a review of (b)(7)(C) testimony and documentation, the RIV staff (b)(5) (b)(5),(b)(7)(C)

On June 11, 2009, (b)(7)(C) was contacted by the NRC and offered an opportunity to attempt to resolve his dispute with the licensee by participating in the NRC's Alternative Dispute Resolution (ADR) program.

On August 7, 2009, the NRC received notification from (b)(7)(C) ADR Program at Cornell University, Ithaca, New York, that the licensee had declined to participate in ADR. On this same date, the RIV Allegation staff notified OI:RIV of the failure of the ADR process.

On August 11, 2009, the RIV staff provided the final ARB minutes and prima facie worksheet to OI:RIV for initiation of an investigation to determine if (b)(7)(C) was subjected to employment discrimination by CGS and Areva for reporting nuclear safety concerns. OI advised the RIV staff that the statute of limitations expired on August 1, 2008; therefore, any willful violations identified during this investigation may not be applicable for escalated enforcement action. (Exhibit 2).

Agent's Analysis

Protected Activity

(b)(7)(C) stated that he raised numerous safety concerns through the filing of Employee Concern Forms while employed at Fluor Hanford during (b)(7)(C) (Exhibit 3, pp. 4-6). (b)(7)(C) said his safety
7c concerns at Fluor Hanford included major failures of the replacement of the PCM drive shaft, management's failure to adequately respond to water quality concerns, that employees were forced to work excessively long shifts, and a failed Fuel Transfer Crane at the 100K Basin. (b)(7)(C) also filed a wrongful termination case with DOL in (b)(7)(C) and testified as a witness in another individual's wrongful termination case.

Management Knowledge

(b)(7)(C) on-line application to Energy Northwest, dated (b)(7)(C) stated that his reason for leaving his job at Fluor Hanford was a "Wrongful termination – Filing Health/Safety Issues" (Exhibit 23, pg. 5).

(b)(7)(C) Energy Northwest, CGS, stated that he was not aware of (b)(7)(C) safety concerns with the DOE until the DOL investigation was initiated (Exhibit 65, pp. 17-21).

(b)(7)(C) Energy Northwest, CGS, said that he did not know (b)(7)(C) or his history, and was not aware of any safety concerns raised by (b)(7)(C) until several years later during the investigation (Exhibit 68, pp. 7-8).

(b)(7)(C) Energy Northwest, CGS, related that he was not aware of (b)(7)(C) past until they received the DOL complaint letter (Exhibit 67, pg. 13).

(b)(7)(C) Energy Northwest, CGS, stated that she did not know (b)(7)(C) prior to his application to Energy Northwest, and said that she was not aware of any safety concern issues at DOE (Exhibit 66, pp. 12-13, 15).

(b)(7)(C) Energy Northwest, CGS, stated that she has never met (b)(7)(C) but knows of him through his DOL complaint. (b)(7)(C) said that she has no knowledge of his safety concerns at DOE (Exhibit 69, pp. 3-4, 12).

(b)(7)(C) Energy Northwest, CGS, did not recall seeing (b)(7)(C) safety concerns listed on his Energy Northwest application. She said that she was not aware of his safety concerns until the DOL investigation (Exhibit 70, pp. 6, 16).

(b)(7)(C) Areva, related that he was not aware of (b)(7)(C) background or of his safety concerns at DOE. The first time he became aware of concerns was during Areva's response to the DOL investigation (Exhibit 71, pp. 11)

(b)(7)(C) Areva, stated that he was not aware of any safety concerns by (b)(7)(C) to DOE (Exhibit 73, pp. 8).

7c

(b)(7)(C) Areva, indicated that she had no knowledge of (b)(7)(C) prior to his application at Areva, and that she had not heard anything about his background or safety concerns at DOE (Exhibit 72, pp. 6, 13).

(b)(7)(C) Areva, advised that he did not know (b)(7)(C) prior to his interview at Areva, and that he was not aware that (b)(7)(C) had raised safety concerns while at DOE (Exhibit 74, pp. 5-6).

Adverse Act

(b)(7)(C) stated that Energy Northwest and Areva failed to employ him on numerous occasions due to his prior protected activity at Fluor Hanford during (b)(7)(C) Exhibit 64, pp. 13-14, 26, 34, 64, 72-73, 76-77 and Exhibit 57).

Nexus

(b)(7)(C) was terminated from Fluor Hanford in (b)(7)(C) for "reasonable and just cause" as determined by a Labor Arbitrator during an arbitration hearing. Fluor's position was that (b)(7)(C) was not mistreated, which is supported by numerous reviews and litigation following (b)(7)(C) discharge (Exhibit 4, pp. 2, 3, 5). (b)(7)(C) filed a complaint with DOL in (b)(7)(C) but the complaint was dismissed because (b)(7)(C) did not have a prima facie case (Exhibit 5).

(b)(7)(C) was terminated from Fluor Hanford for "falsification of records" and for "insubordination" because he violated instructions not to return to Company premises during an investigatory suspension. (b)(7)(C) had submitted a false time card where he failed to account for a late start and an early departure from work on (b)(7)(C) (b)(7)(C) was observed on site after (b)(7)(C) had been suspended and banished from the premises. The arbitrator determined that (b)(7)(C) knew his time card was incorrect and had failed to correct it

even after being told to change it by a supervisor. The arbitrator determined that (b)(7)(C) had returned to the Company's premises on (b)(7)(C) based on witness testimony from two credible witnesses who personally saw (b)(7)(C) on site, and another witness who informed (b)(7)(C) that he had to leave the premises. The arbitrator also determined that (b)(7)(C) was not truthful to his employer during his testimony in the hearing and ruled, "The conclusion is inescapable – Grievant (b)(7)(C) has not told the truth." The arbitrator further stated, "But, in my mind, these mitigating factors, taken separately or together, cannot overcome the fact that I firmly believe Grievant (b)(7)(C) was dishonest in responding to the Employer's investigation and in his testimony under oath at the hearing" (Exhibit 6, pp. 1, 4-10, 13-14).

On (b)(7)(C) the State of Washington Office of Administrative Hearings for the Employment Security Department determined in Section 30, that (b)(7)(C) claimed to be a whistleblower, but (b)(7)(C) falsification of his time card issue was unrelated to any whistle blower activities. The conclusion of law was that "any whistleblowing activities on the claimant's (b)(7)(C) part did not cause the discharge" as (b)(7)(C) failure to correct his time card and his failure to keep his supervisor apprized was significant and led to his discharge (Exhibit 9, pp. 1, 5-6). (b)(7)(C) suit against the State of Washington was dismissed (Exhibit 10). (b)(7)(C) then filed a complaint with the U. S. National Labor Relations Board (NLRB) (Exhibit 11), which was subsequently withdrawn (Exhibit 13).

7c

On (b)(7)(C) the Commissioner of the Employment Security Department of the State of Washington upheld the decision of the Office of Administrative Hearings which was issued on (b)(7)(C) and adopted its findings of fact and conclusions of law (Exhibit 8, pp 1-3). On (b)(7)(C), the U.S. District Court, Eastern District of Washington, dismissed the case of (b)(7)(C) v. Fluor Hanford (Exhibit 7, pg. 1-2). On (b)(7)(C) the NLRB also denied (b)(7)(C) complaint (Exhibit 12, pg. 1). (b)(7)(C) subsequently filed a complaint with DOL on (b)(7)(C) (b)(7)(C) citing discrimination by Energy Northwest, Areva, and other companies for employment discrimination against him (Exhibit 3). (b)(7)(C) filed numerous complaints with various agencies over his termination, although all were ultimately unsuccessful. (b)(7)(C) was suspended for falsifying his time card and then re-entering company premises while on suspension and being told to stay off site during the investigation (Exhibits 14-19). (b)(7)(C) had been told to amend the time card to correct it but he never did. As a result, (b)(7)(C) was suspended and ordered to stay off site, however, he was observed by several employees on site a few days later. He then lied at a hearing about when he was on site which was contradicted by direct testimony (b)(7)(C) was not fired for whistleblower activities at Fluor Hanford, but solely over the falsified time card and the insubordination issue for returning to site while on suspension.

In their response to the DOL complaint (Exhibit 20), Energy Northwest acknowledged that (b)(7)(C) applied for several positions with them, but was not hired for a permanent position. Section 59 of the letter points out that (b)(7)(C) was hired by Energy Northwest for a temporary position for the 2007 refueling outage. Section 41 shows that (b)(7)(C) applied for a position which he was not qualified for, and Section 42 indicates that (b)(7)(C) applied for three mechanic positions but was not interviewed (Exhibit 20, pp. 1, 5, 8). In their position paper, Energy Northwest shows that (b)(7)(C) interviewed four separate times for positions during (b)(7)(C) and (b)(7)(C) During his first interview (b)(7)(C) rated third out of 5 applicants. In his second interview, (b)(7)(C) rated third out of four applicants. During his third interview, (b)(7)(C) placed fourth out of nine applicants, and in the fourth interview (b)(7)(C) rated third out of seven. Additionally, (b)(7)(C) has worked for Energy Northwest at three different temporary positions, twice in (b)(7)(C) and once

in (b)(7)(C) (b)(7)(C) has also worked on-site at Energy Northwest for a contractor, Williams Plant Services. Records show that (b)(7)(C) is eligible for rehire at Energy Northwest (Exhibit 21, pp. 1, 5-7, 9; Exhibit 27; Exhibit 28, p. 1; Exhibit 29, p. 1; Exhibit 30, p. 1). Energy Northwest also maintained that it has a strong policy regarding their safety culture and their safety conscious work environment (Exhibit 22) and that it does not discriminate.

(b)(7)(C) also applied for a Journeyman Equipment Operator position at Energy Northwest, REQ. 002216, but he was not qualified for that position (Exhibit 24). He then applied for a maintenance mechanic position (Exhibit 26), but that position was later cancelled (Exhibit 25). (b)(7)(C) also provided a copy of his resume (Exhibit 37). Position descriptions for several of the positions that (b)(7)(C) applied for were obtained and reviewed, including the maintenance work team manager (Exhibit 31), the maintenance work week supervisor (Exhibit 32), the project lead for major maintenance (Exhibit 33), and training specialist (Exhibit 34). Energy Northwest provided a computer printout regarding (b)(7)(C) applications (Exhibit 39), and wrote him a letter to explain the outcome of his applications to Energy Northwest (Exhibit 40). (b)(7)(C) PADS entry was reviewed and no negative entries were contained in his record (Exhibit 42).

(b)(7)(C) application to Energy Northwest, dated (b)(7)(C) shows that (b)(7)(C) listed his reason for leaving Fluor Hanford as "Wrongful termination – Filing Health/Safety Issues" (Exhibit 23, pp. 5-6). However, in (b)(7)(C) hearing with the State of Washington on (b)(7)(C) (b)(7)(C) the judge ruled in Section 28 that, "He (b)(7)(C) was discharged for insubordination and falsification of records (time card)." In Section 30, the Order states that, "Claimant (b)(7)(C) alleged that the time card issue was a setup by the employer [Fluor Hanford] to discharge him. The undersigned [Judith McCarthy, Administrative Law Judge] is unwilling/unable to infer that the employer set up claimant (b)(7)(C) because of his past whistleblower activities" (Exhibit 9, pp. 1, 4-5). (b)(7)(C) continues to assert that he was fired for whistleblower activities when that is not the case (b)(7)(C) caused his own termination by falsifying on his time card that he was at work when he was not, and then he re-entered the company premises after being suspended and ordered to stay off site during the investigation. This has been upheld at many levels of appeal, but (b)(7)(C) continues to portray himself as a whistleblower who suffered retaliation with no evidence to support that claim, while all of the evidence supports that (b)(7)(C) was fired for cause.

7c

On (b)(7)(C) (b)(7)(C) was offered a position of employment at CGS for the (b)(7)(C) Refueling Outage R-19; however (b)(7)(C) turned down the offer of employment due to another job that he had (Exhibit 41, p. 1). (b)(7)(C) is claiming discrimination by Energy Northwest for refusing to hire him while at the same time he is turning down an offer of employment by them.

(b)(7)(C) stated that he had previously hired (b)(7)(C) during Outage R-17 in (b)(7)(C) at CGS. (b)(7)(C) recalled that (b)(7)(C) also had previously worked at the cooling towers during R-18 (in (b)(7)(C) (b)(7)(C) related that he offered a temporary position to (b)(7)(C) in 2009, but (b)(7)(C) turned down the position (b)(7)(C) pointed out that he recommended to (b)(7)(C) to apply at Energy Northwest because (b)(7)(C) thought that (b)(7)(C) did a good job during the outages. (b)(7)(C) was aware that (b)(7)(C) had interviewed on at least two occasions, but that (b)(7)(C) was never the top ranked person by the interview panels, adding that (b)(7)(C) usually came in around third place. (b)(7)(C) advised that (b)(7)(C) did not meet the qualifications for the training position that he applied for because his background did not meet the ANSI [American National Standards Institute] standard. (b)(7)(C) was not aware of (b)(7)(C) history with DOE, nor was he

aware of any safety concerns raised by (b)(7)(C) said he had never heard of (b)(7)(C) prior to his employment at Energy Northwest, and that he did not notice any safety concerns listed on (b)(7)(C) application. (b)(7)(C) said that he is not aware of anything that is keeping (b)(7)(C) from being hired at Energy Northwest (Exhibit 65, pp. 4, 7-12, 14, 17, 19, 29).

(b)(7)(C) related that he first met (b)(7)(C) during R-17 (b)(7)(C) when (b)(7)(C) worked for him at CGS during the outage. He commented that (b)(7)(C) met their expectations and that he is eligible for rehire (b)(7)(C) said he had never heard of (b)(7)(C) his prior history, or of his safety concerns prior to his employment at CGS. He recalled hearing some negative hearsay about (b)(7)(C) during R-18 in (b)(7)(C) from some of their mechanics. (b)(7)(C) characterized the comments as not towards (b)(7)(C) quality of work, but more concerned with trust issues, such as "you better watch your back if you hire this guy." (b)(7)(C) said he did not factor these comments into his decision making as he relies on "how he performed while he was here." He added that he interviewed (b)(7)(C) on two occasions, as part of a panel of four to five people. He recalled that (b)(7)(C) rated good during the interviews; however, "he didn't score as well as a few other people did...That's how our interview works. It weeds out the better and ranks them" (Exhibit 68, pp. 4, 6-10, 13).

(b)(7)(C) related an incident he had with (b)(7)(C) during R-17 where (b)(7)(C) was "telling" on another co-worker. (b)(7)(C) looked into the issue and found that the other individual was not wrong and the whole thing was "just a big misunderstanding, but it seemed to me to be kind of a tattle-tale thing; kind of one-upsmanship is what I got the impression of."

7c

(b)(7)(C) brought up another incident involving (b)(7)(C) during R-18 so (b)(7)(C) "felt that maybe there's an issue there of - - a bit of a trust issue." He said that "in those two occasions, neither time did he acknowledge a mistake, or say you know, I could have been wrong...he stuck to his gun, and I just thought that was kind of weird. So, yes, that did play in my mind during the interviews," adding that (b)(7)(C) even brought up one of the incidents during the interview. (b)(7)(C) clarified that the only things that influenced him where "what occurred here on this property, not anywhere else." (b)(7)(C) said that he did not think that anyone on the interview panel was aware of (b)(7)(C) past with DOE, and did not recall (b)(7)(C) mentioning his DOE safety concerns or his termination during the interview. He said the only reason why (b)(7)(C) was not hired was that another individual scored higher than (b)(7)(C) in the evaluation process (Exhibit 68, pp. 14-17, 21, 25-26, 30).

(b)(7)(C) stated that he was contacted by the Energy Northwest legal department to gather documentation regarding (b)(7)(C) He said that (b)(7)(C) applied to Energy Northwest approximately 14 times, and was interviewed approximately 4 times, but was not offered a position. He described that a panel of employees conduct the interview and grade the applicant based on the core values of the company, with the goal being to identify the strongest individual. He said that (b)(7)(C) was highly qualified but always seemed to rank either third or fourth on the interview grading list. (b)(7)(C) looked into the matter and found that (b)(7)(C) "just didn't perform well in the interview." He did point out that (b)(7)(C) worked on site during at least 2 outages (b)(7)(C) and had a satisfactory record. (b)(7)(C) said he was not aware of (b)(7)(C) past with DOE until they received the complaint letter. (b)(7)(C) said their records indicate that (b)(7)(C) is eligible for rehire and that they recently offered (b)(7)(C) a position for the (b)(7)(C) outage (Exhibit 67, pp. 3-9, 11-13, 21, 25).

(b)(7)(C) recalled that (b)(7)(C) was hired to work R-17 (b)(7)(C) as a mechanic, and that he also worked on site during R-18 (b)(7)(C) for a contractor, Williams Plant Services. She commented that when hiring new employees, the company looks at an individual's past performance during temporary positions and at their core values and skills during the interview process. (b)(7)(C) said she typically reviews an application and resume for the qualifications criteria (Exhibit 38), and if the individual meets the qualifications she then forwards that package to the hiring manager. She clarified that prior DOE experience is not considered to be commercial nuclear experience when applying for a position at CGS because DOE experience is just cleaning up the Hanford site. She advised that she was not knowledgeable about (b)(7)(C) past or his safety concerns, and that she did not know of him prior to his employment at CGS. She said (b)(7)(C) is eligible for rehire. (b)(7)(C) explained that the interviews are conducted by a panel of three to five people with preplanned questions, and the applicant is scored based on their responses. She said they would also rely on evaluations from prior temporary work performed on site (Exhibit 66, pp. 4, 6, 9-13, 15-17, 20-24; Exhibit 35).

(b)(7)(C) related that she has never met (b)(7)(C) but is familiar with the DOL complaint as she assisted in gathering documents. She noted that (b)(7)(C) applied for multiple positions at CGS (Exhibit 36). She described the panel interview process and explained that applicants are ranked by score. She said that she was not aware of any bias against (b)(7)(C) nor did she have any knowledge of (b)(7)(C) DOE safety concerns. She added that she was not aware of anyone else who knew about (b)(7)(C) DOE safety concerns (Exhibit 69, pp. 3-4, 10-12, 16).

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(b)(7)(C) recalled meeting (b)(7)(C) during the outage in (b)(7)(C) She did not recall any references to (b)(7)(C) DOE safety concerns on his application. She explained that prior work at DOE's Hanford site is not considered commercial nuclear experience, but added that the mechanic positions do not require commercial nuclear experience. She noted that (b)(7)(C) has worked several outages at CGS and many of their new hires originated as outage workers. She said they actually have very few openings at the site due to limited turnover, which usually comes from a retirement. She commented on (b)(7)(C) evaluation from his temporary work (Exhibit 35), and described his scores of mostly 2's on a scale of 1 to 3, with 3 being considered the highest. She said that (b)(7)(C) has not been denied a position due to safety concerns as she was not aware of his safety concerns. She added that she has not heard anything negative about (b)(7)(C) noted that she offered (b)(7)(C) a position during the (b)(7)(C) outage but he declined it due to another job (Exhibit 70, pp. 4, 6-7, 11-16, 19-21).

In his complaint, (b)(7)(C) also identified Areva as discriminating against him for failing to hire him (Exhibit 57). (b)(7)(C) applied for a maintenance and a supervisory position (Exhibit 47 and Exhibit 56) as shown in Areva's Activity Report (Exhibit 49). Areva points out in its position paper that Areva has no relationship to Fluor Hanford or DOE. They acknowledged that (b)(7)(C) did apply for a position along with 16 other candidates. (b)(7)(C) was interviewed but was not considered the best qualified candidate for the two openings that Areva was hiring for. Additionally, there is no evidence to support that Areva hiring personnel had knowledge of (b)(7)(C) DOE safety concerns, nor was it ever brought up or discussed during (b)(7)(C) interview. Areva also points out that (b)(7)(C) has previously worked on site at Areva as a subcontractor i (b)(7)(C) Exhibit 44, pp. 2-3, 5-7; Exhibit 43). Areva also supplied their Employee Concerns Program Policy (Exhibit 45) and their anti-harassment policy (Exhibit 46).

Areva produced the ranking chart for the position that (b)(7)(C) had applied for, where (b)(7)(C) ranked fifth out of seven interviewees (Exhibit 48), and also provided the applications of other applicants that (b)(7)(C) was competing against (Exhibits 50-55). In an Affidavit, (b)(7)(C) disclosed that she was part of the interview team for (b)(7)(C) and the other candidates. She stated that (b)(7)(C) never discussed protected activities from DOE and that she was not aware of any past protected activities by (b)(7)(C) She said (b)(7)(C) was not selected by Areva because he was not one of the most qualified candidates (Exhibit 58, pp. 1-3). In an Affidavit, [James PAYNE, who is now deceased due to a driving accident] also stated that he was part of the interview team. In the Affidavit, [PAYNE] stated that he was not aware of any protected activities by (b)(7)(C) and that issue was never discussed during (b)(7)(C) interview. [PAYNE's] Affidavit indicated that he first learned of (b)(7)(C) whistleblowing activities when Areva was notified of the DOL complaint. [PAYNE] wrote that (b)(7)(C) was not hired because he was not scored as one of the two best qualified for the position (Exhibit 59, pp. 1-3). Time cards from Thompson Mechanical show that (b)(7)(C) did work on site at Areva during 2004 (Exhibit 60 and 61).

(b)(7)(C) related that he met (b)(7)(C) during (b)(7)(C) interview at Areva where (b)(7)(C) was part of the interview panel. He said the applicants are scored and ranked collectively by the group. (b)(7)(C) was aware that (b)(7)(C) had worked on site previously for a contractor, but did not know (b)(7)(C) or of his DOE safety concerns until the DOL investigation took place. (b)(7)(C) said the highest scoring candidates are offered positions, and 2 other individuals were selected as (b)(7)(C) did not score as high as the other candidates (Exhibit 71, pp. 5-6, 9-15, 20).

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(b)(7)(C) recalled (b)(7)(C) and from seeing him on site as a contractor in (b)(7) He said they both belong to the same Union, Local 1699. (b)(7)(C) was aware that (b)(7)(C) had applied at Areva but had no knowledge as to why (b)(7)(C) was not selected. (b)(7)(C) said that he has no input in the hiring process. He was not aware of any bias involving (b)(7)(C) nor was he aware of any DOE safety concerns (Exhibit 73, pp. 3-8).

(b)(7)(C) related that she was on the interview panel for (b)(7)(C) but had never met him prior to that. She said that after the applicant's interview, a consensus is reached amongst the group and the individual is rated with a score. (b)(7)(C) did not observe any bias involving (b)(7)(C) in his treatment or scoring. She was not aware of any DOE safety concerns and it was never brought up during the interview. (b)(7)(C) said that two applicants with higher interview scores were offered the positions at Areva, while (b)(7)(C) had a lower score and was not considered one of the best qualified candidates (Exhibit 72, pp. 5-6, 11-14, 18).

(b)(7)(C) was present during (b)(7)(C) interview as part of the panel. He had no prior knowledge of (b)(7)(C) or of his DOE safety concerns. (b)(7)(C) did know that (b)(7)(C) had previously worked on site as a (b)(7)(C). He indicated that (b)(7)(C) was treated the same as all of the other applicants, and he did not observe any bias involving (b)(7)(C) from anyone on the panel. He said the ranking was done collectively and no one on the panel appeared negative towards (b)(7)(C) said that (b)(7)(C) "was not hired because he wasn't the highest scoring candidate" (Exhibit 74, pp. 5-12, 17).

The DOL investigation of discrimination against (b)(7)(C) dated (b)(7)(C) found "that there is no reasonable cause to believe that the Respondents violated the ERA" (Exhibit 62, p. 1). The DOL investigation found that the "Respondent did not have knowledge of

Complainant's (b)(7)(C) protected activity. Respondents denied knowledge of Complainant's protected activities and Complainant was unable to rebut this evidence." DOL concluded that the "Complainant has not met his burden of showing a prima facie case of retaliation. Therefore, no inference of discrimination has been raised" (Exhibit 63, pp. 1, 10; Exhibit 62).

(b)(7)(C) alleged discrimination by CGS, even though CGS has hired him three times, and he has also worked on site a fourth time as a contractor. Additionally, CGS offered him employment again in (b)(7)(C) but (b)(7)(C) turned down the position due to another job he had. Many of CGS' new hires are selected from employees who have worked on site during prior outages. (b)(7)(C) prior evaluation from CGS is average, and he does not score very high during panel interviews, which explains his failure to be hired at CGS. No one at CGS knew of (b)(7)(C) prior protected activities at DOE, so it was not a factor in his not being hired. (b)(7)(C) felt that (b)(7)(C) did have some trust issue based on his outage employment where he was involved in "tattle-tale" behavior on two occasions, and both times (b)(7)(C) turned out to be incorrect. (b)(7)(C) felt that (b)(7)(C) should have owned up to his being wrong during these incidents and the fact that he did not was considered unusual behavior by (b)(7)(C)

7c This same pattern of unusual behavior is also evident after (b)(7)(C) termination from Fluor Hanford where he filed numerous complaints and litigation against the company for several years, losing every hearing along the way, but never admitting that he was at fault for his own termination. (b)(7)(C) even provided false testimony during a hearing as he refused to accept ownership for his conduct and behavior at Fluor Hanford, where he falsified his time card and entered the company premises after he was suspended and ordered to stay off site.

Additionally, none of the interviewees at Areva were aware of (b)(7)(C) protected activities at DOE, so that was not a factor in his failure to be hired. He was not hired at Areva simply because he was not the most qualified applicant to apply for the position based on their interview panel rating. The way Areva interview panels are conducted, the interview panel team discusses the applicant and collectively ranks that individual. As a result, no one person controls or has a dominant vote in the process; therefore, any one person cannot affect the individual's chances of being hired as it comes down to a team decision. (b)(7)(C) allegations against Areva are baseless since none of the panel members were aware of (b)(7)(C) safety concerns from four years earlier.

Conclusion

Based upon the evidence developed, the allegation that (b)(7)(C) (b)(7)(C) was discriminated against by CGS and/or Areva for raising nuclear safety concerns was not substantiated.

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LIST OF EXHIBITS

Exhibit No.	Description
1	NRC Investigative Status Record, OI Case No. 4-2009-068, dated August 21, 2009 (2 pages).
2	Allegation Review Board (ARB) Record, Allegation No. RIV-2008-A-0069, dated June 2, 2008 (11pages).
3	U.S. Department of Labor (DOL), Occupational Safety and Health Administration (OSHA), Complaint of Discrimination by (b)(7)(C) vs. Energy Northwest; Areva NP, Inc.; Battelle Memorial Institute; Fluor Hanford, Inc.; Fluor Corp., dated (b)(7)(C) (12 pages).
4	Fluor Hanford Inc. and Fluor Corp. position paper to DOL in the (b)(7)(C) Case (b)(7)(C) (5 pages).
5	DOL Notice of Determination letter to (b)(7)(C) advising that his complaint does not make a prima facie showing (3 pages).
6	Arbitration Decision between Fluor Hanford and the Hanford Atomic Metal Trades Council, Carpenters, and Millwrights, Local 2403, regarding the (b)(7)(C) (b)(7)(C) (15 pages).
7	U.S. District Court, Eastern District of Washington, Case No. (b)(7)(C) vs. Fluor Hanford, Inc., dated (b)(7)(C) (2 pages).
8	Hearing before the Commissioner of the Employment Security Department of the State of Washington, (b)(7)(C) where (b)(7)(C) claim for benefits is denied, dated (b)(7)(C) (4 pages).
9	State of Washington, Office of Administrative Hearings for the Employment Security Department, Docket No. (b)(7)(C) (8 pages).
10	State of Washington, Thurston County Superior Court, No. (b)(7)(C) vs. Employment Security Department of the State of Washington, dated (b)(7)(C) (2 pages).
11	U.S. National Labor Relations Board, regarding (b)(7)(C) vs. Fluor Hanford, Case (b)(7)(C) (4 pages).
12	U.S. National Labor Relations Board, regarding Case No. (b)(7)(C) (b)(7)(C) (2 pages).

LIST OF EXHIBITS

Exhibit No.	Description
13	U.S. National Labor Relations Board, regarding Case No. (b)(7)(C) (b)(7)(C) 1 page).
14	Letter from Fluor Hanford (b)(7)(C) Terminating his employment for falsification of time cards and insubordination (1 page).
15	Flour memorandum to (b)(7)(C) suspending him for falsification of time cards, dated (b)(7)(C) 1 page).
16	Employee Status/Change Authorization for (b)(7)(C) going from suspension to discharge effective (b)(7)(C) (1 page).
17	Disciplinary Termination Letter from Fluor Hanford (b)(7)(C) (b)(7)(C) 1 page).
18	Employee Record Change for (b)(7)(C) citing Discharge for cause (1 page).
19	Employee Status/Change Authorization for (b)(7)(C) being placed on unpaid suspension effective (b)(7)(C) (1 page).
20	Energy Northwest's answer to the U.S. DOL, OSHA, Complaint of Discrimination by (b)(7)(C) (11 pages).
21	Energy Northwest's position paper to the U.S. DOL, OSHA, Complaint of Discrimination by (b)(7)(C) (10 pages).
22	Documents provided by Energy Northwest regarding their Safety Culture, Safety Conscious Work Environment, Employee Concerns Program, Differing Professional Opinions, Principles for a Strong Nuclear Safety Culture, and Non-Harassment Policy (45 pages).
23	(b)(7)(C) on-line application to Energy Northwest, submitted (b)(7)(C) (24 pages).
24	Email from Energy Northwest (b)(7)(C) (1 page).
25	Email from Energy Northwest (b)(7)(C) (1 page).

LIST OF EXHIBITS

Exhibit No.	Description
26	Energy Northwest Position Description for a Maintenance Mechanic, Job Code BS004, dated July 28, 2005 (11 pages).
27	Mechanic Interview Score Sheet Summary for applicants, dated September 6, 2005 (1 page).
28	Applicant Action Average Weighted Scores, for Mechanic position 002582, dated December 2005 (3 pages).
29	Applicant scores and rankings for Job Posting 002711 and 002737, dated June 21, 2006 (4 pages).
30	Applicant Action Total Weighted Scores, for Mechanic position 002812, undated (3 pages).
31	Energy Northwest Position Description for Maintenance Work Team Manager, Job Code AI166, dated February 24, 2000 (7 pages).
32	Energy Northwest Position Description for Maintenance Work Week Supervisor, Job Code BF224, dated February 24, 2000 (7 pages).
33	Energy Northwest Position Description for a Project Lead – Major Maintenance, Job Code AM230, dated June 27, 2006 (5 pages).
34	Energy Northwest Position Description for a Training Specialist III – Mechanical Program Lead, Job Code AM233, dated June 12, 2007 (5 pages).
35	Energy Northwest Temporary Employee Evaluation Report for (b)(7)(C) (b)(7)(C) as a temporary outage mechanic, along with his hiring package and personnel files (40 pages).
36	Lists of (b)(7)(C) applications to Energy Northwest from (b)(7)(C) (b)(7)(C) (1 page).
37	(b)(7)(C) resume, undated (2 pages).
38	Email from (b)(7)(C) Energy Northwest to (b)(7)(C) (1 page).
39	Energy Northwest computer printout of (b)(7)(C) rejection for positions 3331 – Mechanic, and 3363 – Procedure Writer II, dated (b)(7)(C) (1 page).

LIST OF EXHIBITS

Exhibit No.	Description
40	Email from (b)(7)(C) Energy Northwest to (b)(7)(C), in response to (b)(7)(C) request regarding his not being hired (4 pages).
41	(b)(7)(C) rejection of a job offer from Energy Northwest via email on (b)(7)(C) to (b)(7)(C) of Energy Northwest (2 pages).
42	PADS Access Synopsis Report for (b)(7)(C) generated on (b)(7)(C) (1 pages).
43	Areva NP Inc.'s (Areva) response to the U.S. DOL, OSHA, Complaint of Discrimination by (b)(7)(C) Case no. (b)(7)(C) (3 pages).
44	Areva's position paper to the U.S. DOL, OSHA, Complaint of Discrimination by (b)(7)(C) dated (b)(7)(C) (9 pages).
45	Areva's Employee Control Concerns Program, Policy No. 0242, Revision 2, Effective October 27, 2006 (3 pages).
46	Areva's Anti-Harassment Policy, Policy No. 0222, Revision 11, Effective January 19, 2007 (2 pages).
47	Areva Employee Requisition Worksheet for a Technical Maintenance 5 position, dated (b)(7)(C) application and resume for that position (8 pages).
48	Areva's ranking of the candidates and the interview evaluations for the candidates considered for the Technical Maintenance position (8 pages).
49	(b)(7)(C) e-Talent Activity Report with Areva, dated from (b)(7)(C) (b)(7)(C) (1 page).
50	Application to Areva for the Technical Maintenance 5 position by (b)(7)(C) (b)(7)(C) (5 pages).
51	Application to Areva for the Technical Maintenance 5 position by (b)(7)(C) dated (b)(7)(C) (7 pages).
52	Application to Areva for the Technical Maintenance 5 position by (b)(7)(C) dated (b)(7)(C) (5 pages).
53	Application to Areva for the Technical Maintenance 5 position by (b)(7)(C) dated (b)(7)(C) (7 pages).

(b)(7)(C)

LIST OF EXHIBITS

Exhibit No.	Description
54	Application to Areva for the Technical Maintenance 5 position by (b)(7)(C) dated (b)(7)(C) (5 pages).
55	Application to Areva for the Technical Maintenance 5 position by (b)(7)(C) (b)(7)(C) undated (4 pages).
56	Areva Requisition INF00066, for a Supervisor, Technical Operations, undated (2 pages).
57	Email from Areva to (b)(7)(C) notifying him that he was not selected for the Technical Maintenance position, dated (b)(7)(C) 1 page).
58	Declaration from (b)(7)(C) Areva, to the U.S. DOL regarding (b)(7)(C) complaint No. (b)(7)(C) (3 pages).
59	Declaration from (b)(7)(C) Areva, to the U.S. DOL regarding (b)(7)(C) complaint No. (b)(7)(C) dated, (b)(7)(C) (3 pages).
60	(b)(7)(C) time sheets for his employment on-site at Areva through a contracting company, (b)(7)(C) from (b)(7)(C) (6 pages).
61	Time sheets for three other (b)(7)(C), who were also laid off between (b)(7)(C) at Areva (3 pages).
62	U.S. DOL letter to (b)(7)(C) stating that there was no finding that the respondents listed in Complaint (b)(7)(C) violated the ERA (4 pages).
63	U.S. DOL Final Investigative Report, dated (b)(7)(C) concluded that the Respondent, Energy Northwest, did not have knowledge of (b)(7)(C) protected activity (10 pages).
64	Transcript of Interview with (b)(7)(C) dated August 15, 2008 (97 pages).
65	Transcript of Interview with (b)(7)(C) dated October 20, 2009 (32 pages).
66	Transcript of Interview with (b)(7)(C) dated October 20, 2009 (26 pages).
67	Transcript of Interview with (b)(7)(C) dated October 20, 2009 (27 pages).
68	Transcript of Interview with (b)(7)(C) dated October 20, 2009 (35 pages).

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LIST OF EXHIBITS

Exhibit No.	Description
69	Transcript of Interview with dated October 20, 2009 (20 pages).
70	Transcript of Interview with dated October 20, 2009 (23 pages).
71	Transcript of Interview with (b)(7)(C) dated November 4, 2009 (22 pages).
72	Transcript of Interview with dated November 4, 2009 (20 pages).
73	Transcript of Interview with dated November 4, 2009 (13 pages).
74	Transcript of Interview with (b)(7)(C) dated November 4, 2009 (19 pages).