



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION IV  
612 EAST LAMAR BLVD, SUITE 400  
ARLINGTON, TEXAS 76011-4125

July 2, 2010

MEMORANDUM TO: Elmo E. Collins, Regional Administrator  
Region IV

FROM: Crystal D. Holland, Director <sup>OK</sup>  
Office of Investigations Field Office, Region IV

7C SUBJECT: PACIFIC GAS AND ELECTRIC COMPANY HUMBOLDT BAY  
POWER PLANT - DISCRIMINATION AGAINST A (b)(7)(C)  
(b)(7)(C) FOR REPORTING SECURITY CONCERNS  
(CASE NO. 4-2010-002/RIV-2009-A-0009)

Enclosed, for whatever action you deem appropriate, is the Office of Investigations (OI) Report of Investigation concerning the above matter.

Please note that documents may have been gathered during the course of the investigation that are not included in either the report or the exhibits. This additional documentation will be maintained in the OI case file and available for the staff's review upon request.

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Enclosure:

cc w/enclosure:  
R. Zimmerman, OE

cc w/o enclosure:  
C. Scott, OGC  
C. Miller, FSME

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Distribution:  
s/f (4-2010-002)

c/f  
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United States  
Nuclear Regulatory Commission

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# Report of Investigation

PACIFIC GAS AND ELECTRIC COMPANY  
HUMBOLDT BAY POWER PLANT:

DISCRIMINATION AGAINST (b)(7)(C)  
(b)(7)(C) FOR REPORTING SECURITY CONCERNS

Office of Investigations

Reported by OI:RIV

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Title: PACIFIC GAS & ELECTRIC COMPANY HUMBOLDT BAY POWER PLANT

7c DISCRIMINATION AGAINST A (b)(7)(C) FOR REPORTING SECURITY CONCERNS

Licensee:  
Pacific Gas & Electric Company  
77 Beale Street  
San Francisco, California 94106

Case No.: 4-2010-002

Report Date: July 2, 2010

Control Office: OI:RIV

Docket No.: 50-07200027

Status: CLOSED

Allegation No.: RIV-2009-A-0009

Reported by:

Reviewed and Approved by:

7c (b)(7)(C)

(b)(7)(C) Special Agent <sup>FM</sup>  
Office of Investigations  
Field Office, Region IV

*Crystal D. Holland*  
Crystal D. Holland, Director  
Office of Investigations  
Field Office, Region IV

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SYNOPSIS

7c This investigation was initiated by the U. S. Nuclear Regulatory Commission, Office of Investigations, Region IV, on October 07, 2009, to determine if a (b)(7)(C) assigned to Pacific Gas and Electric Company's Humboldt Bay Power Plant (HBPP), Eureka, California, was the subject of discrimination for raising safety concerns.

7c Based on the evidence developed during this investigation, the allegation that a (b)(7)(C) (b)(7)(C) at HBPP was the subject of discrimination for raising safety concerns was not substantiated.

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Case No. 4-2010-002

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Case No. 4-2010-002

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TESTIMONIAL EVIDENCE

Exhibit

(b)(7)(C)	Pacific Gas and Electric Company (PG&E), Humboldt Bay Power Plant (HBPP), Eureka, California .....	14
(b)(7)(C)	PG&E, Diablo Canyon Power Plant (DCPP), Avila Beach, California .....	9
(b)(7)(C)	HBPP .....	3
(b)(7)(C)	HBPP .....	19
(b)(7)(C)	HBPP .....	13
(b)(7)(C)	HBPP .....	15
(b)(7)(C)	HBPP .....	16, 18
(b)(7)(C)	DCPP .....	21
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**DOCUMENTARY EVIDENCE**

Exhibit

Document from (b)(7)(C) dated (b)(7)(C) ..... 5

Pacific Gas & Electric (b)(7)(C) for (b)(7)(C) signed by (b)(7)(C)  
dated (b)(7)(C) ..... 6

(b)(7)(C) for (b)(7)(C) signed by (b)(7)(C) dated (b)(7)(C) ..... 7

Email from (b)(7)(C) dated (b)(7)(C) ..... 10

Performance History of (b)(7)(C) dated (b)(7)(C) ..... 17

Performance Action Plan of (b)(7)(C) dated (b)(7)(C) ..... 20

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**DETAILS OF INVESTIGATION**

Applicable Regulations

10 CFR 50.7: Employee protection (2008 Edition) (Allegation No. 1)

10 CFR 50.5: Deliberate misconduct (2008 Edition) (Allegation No. 1)

Purpose of Investigation

7c On October 7, 2009, the Nuclear Regulatory Commission (NRC), Region IV (RIV), received an allegation from (b)(7)(C) at Pacific Gas and Electric Company's (PG&E) Humboldt Bay Power Plant (HBPP), Eureka, California. (b)(7)(C) alleged that he had been subjected to discrimination for raising security concerns at HBPP and, as a result, his employment (b)(7)(C) [Allegation No. RIV-2009-A-0009] (Exhibit 1).

Background

7c On February 3, 2009, the Allegation Review Board (ARB), RIV, convened to review concerns reported by (b)(7)(C). Specifically, (b)(7)(C) alleged that he had been subjected to discrimination for reporting that a supervisor had falsified security logs and failed to report violations of procedures by security officers. The ARB concluded that further clarification of (b)(7)(C) concerns was required before the ARB would render a decision.

7c On March 2, 2009, the ARB reconvened to request assistance from the Office of Investigations (OI), RIV, with an interview of (b)(7)(C) to obtain clarifying details of his concerns in order to evaluate his protected activity [OI Case No. 4-2009-026F].

7c On April 2, 2009, (b)(7)(C) was interviewed by OI and, after a review of (b)(7)(C) interview transcript, the RIV staff determined that he had engaged in protected activity and may have been subjected to discrimination. Additional security concerns reported to the NRC by (b)(7)(C) were referred to OI for investigation [OI Case No. 4-2009-048].

7c On June 18, 2009, (b)(7)(C) was contacted by the NRC and offered an opportunity to participate in the NRC's Alternative Dispute Resolution (ADR) process in an attempt to resolve his dispute with the licensee.

7c On September 22, 2009, (b)(7)(C) at Cornell University, Ithaca, New York, notified the NRC that the licensee had declined to participate in ADR.

7c On October 5, 2009, the RIV ARB requested that OI initiate an investigation to determine if (b)(7)(C) was subjected to discrimination for raising security concerns and reporting that a supervisor had violated procedures. A Prima Facie Checklist was provided to OI with the ARB documentation (Exhibit 2).

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Interview of Allegor (b)(7)(C) (Exhibit 3)

7c On April 2, 2009, OI:RIV conducted an interview with (b)(7)(C) in Eureka, California. During his interview, (b)(7)(C) advised that his employment as an (b)(7)(C) at HBPP was (b)(7)(C) by (b)(7)(C) HBPP. (b)(7)(C) related that his troubles began in 2005 when his supervisor (b)(7)(C) misrepresented or falsified reports pertaining to (b)(7)(C) HBPP. (b)(7)(C) advised that he and several other (b)(7)(C) [NFI] had filed a report with the Employee Concerns Program (ECP) (Exhibit 3, pp. 7-10).

7c (b)(7)(C) advised that he was placed on probationary status in (b)(7)(C) by (b)(7)(C) due to alleged violations that he (b)(7)(C) was not conducting a roving patrol due to an (b)(7)(C) (b)(7)(C) advised that the security guards were allowed to stop for "a short period of time" during patrols and, according to (b)(7)(C) that meant approximately 5 minutes. (b)(7)(C) related that while on patrol he sat down approximately three separate times within the 5 minute time period, which had been established by (b)(7)(C) but was later questioned by (b)(7)(C) about his patrol stops. (b)(7)(C) said (b)(7)(C) never told him during questioning that he had violated any guidelines or rules, but used those incidents [patrol stops] as one of the factors to put him on probation for 6 months. (b)(7)(C) recalled that approximately 1 month before he (b)(7)(C) he was involved in an incident with the door in the Secondary Alarm Station (SAS) not working properly and the door kept giving false alarms. (b)(7)(C) said that he may have missed an alarm because the door reset or did not reset. The incident was written up by another HBPP (b)(7)(C) and when (b)(7)(C) found out about the missed alarm, he (b)(7)(C) escalated the incident due to the critical location of the door. (b)(7)(C) advised that (b)(7)(C) used this incident (b)(7)(C) for failure to follow policy and procedure and (b)(7)(C) him for a missed alarm in the SAS, even though the door had been malfunctioning for 3 weeks (Exhibit 3, pp. 11-20).

7c (b)(7)(C) claimed protected activity back to (b)(7)(C) and he believed (b)(7)(C) falsified records and covered up an incident when (b)(7)(C) failed to reactivate or alarm a refueling building door during a roving patrol. (b)(7)(C) provided one unsigned and undated typed page pertaining to the incident involving (b)(7)(C) as well as other incidents. OI:RIV asked (b)(7)(C) to identify the document by hand writing the date (b)(7)(C), the word "summary" and by placing his signature on the document (Exhibit 5). (b)(7)(C) advised that he had also provided the document to (b)(7)(C) ECP, Diablo Canyon Power Plant. (b)(7)(C) could not provide the date of the summary or when he gave it to the ECP, but referenced the SAP # (b)(7)(C) and the date of the incident with (b)(7)(C) as (b)(7)(C) (b)(7)(C) related that he did not report the contents of the document either to his HBPP supervisors or to the NRC at that time. (b)(7)(C) advised that according to the SAP, (b)(7)(C) was coached and counseled for the incident. According to (b)(7)(C) because he reported this incident involving (b)(7)(C) and his (b)(7)(C) cover-ups, it took (b)(7)(C) over (b)(7)(C) to build up enough information [incidents with (b)(7)(C) not roving and a missed bomb during a security drill] to get him (b)(7)(C) (Exhibit 3, pp. 22-30).

7c (b)(7)(C) recalled yet another incident that contributed to him being placed on probation, which involved security keys that had been taken home by (b)(7)(C) HBPP. (b)(7)(C) related that he when relieved (b)(7)(C) from shift and asked if the "keys had

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7c been turned in," (b)(7)(C) responded that he had returned the keys. (b)(7)(C) did not perform a verification check with (b)(7)(C) and later learned that he (b)(7)(C) had taken the keys home. (b)(7)(C) recalled that this key incident was placed on his evaluation and was part of the reason why he was placed on probation. (b)(7)(C) was asked to provide clarification of his protected activity, and advised that it was in late 2005 or early 2006 when he provided Exhibit 5 to (b)(7)(C). According to (b)(7)(C) HBPP conducted an investigation regarding (b)(7)(C) with no results, and that (b)(7)(C) continued to conduct illegal activities and falsify documents. (b)(7)(C) advised that because he continued to report concerns to the ECP, he (b)(7)(C) was denied promotions and essentially harassed [by (b)(7)(C) confirmed that he felt as if (b)(7)(C) was retaliating against him for reporting the incident of (b)(7)(C) and not because he (b)(7)(C) was involved with the patrol stop incidents. (b)(7)(C) advised that the PG&E Human Resources (HR) department operates under progressive discipline, and no one incident [minus a major event] will get you fired. Therefore, according to (b)(7)(C) spent the next 3 years accumulating "stuff" (b)(7)(C) him (b)(7)(C). (b)(7)(C) stated that a fellow co-worker, (b)(7)(C) commented to him, "Well ... It took him 3 years to build a case on you, and he finally did it" (Exhibit 3, p. 37), referring to (b)(7)(C) (Exhibit 3, pp. 31-38).

7c (b)(7)(C) recalled that (b)(7)(C) wrote his (b)(7)(C) evaluations and submitted to (b)(7)(C) for review. He said that after (b)(7)(C) changed the evaluations to reflect what he wanted it to say, (b)(7)(C) would then resubmit it to (b)(7)(C) for his signature. (b)(7)(C) related that he requested access to his personnel file (b)(7)(C) but HR wrote back and informed him that there was nothing in his personnel file. (b)(7)(C) claimed that (b)(7)(C) stated that part of the reason that he was being placed on probation was because of continued disciplinary actions and problems within the last 3 years prior to him (b)(7)(C) being placed on probation. (b)(7)(C) advised that all of his evaluations were completed by (b)(7)(C) and none mentioned the roving issues. (b)(7)(C) advised that his evaluations were not in his personnel record, and (b)(7)(C) to being placed on probation, he received his mid-year review, and everything was good with no adverse actions noted on his mid-year review (Exhibit 3, pp. 39-43).

7c (b)(7)(C) stated that (b)(7)(C) actually told him that, "he was trying to get rid of me and fire me" (Exhibit 3, p. 44). referring to (b)(7)(C). According to (b)(7)(C) asked him not to mention his comment to anyone (Exhibit 3 p. 43-45).

Coordination with Regional Counsel

5/7c This investigation was initiated with the concurrence of (b)(7)(C) Regional Counsel, RIV. (b)(7)(C) On October 7, 2009, OI:RIV provided a copy of (b)(7)(C) transcript of interview to (b)(7)(C) for her review to determine if (b)(7)(C) had engaged in protected activities and possibly the subject of employment discrimination.

5 On May 29, 2009, (b)(7)(C) advised that, based on a review of (b)(7)(C) transcript, she believed (b)(7)(C) (Exhibit 4).

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Agent's Analysis

7c

This investigation was initiated to determine if (b)(7)(C) was the subject of employment discrimination by HBPP management for raising safety concerns.

Protected Activity

(b)(7)(C) claimed that he raised a safety concern on (b)(7)(C) when (b)(7)(C) failed to re-activate the alarm on the refueling building door prior to compensatory measure. Further, the document (Exhibit 5) indicated that (b)(7)(C) was involved in covering up incidents and falsifying documents associated with (b)(7)(C) not properly conducting roving patrols (Exhibit 3, pp. 22).

7c

Knowledge of (b)(7)(C) Protected Activity

(b)(7)(C) advised that he notified (b)(7)(C) in (b)(7)(C) when he sent him a one page document (Exhibit 5) with details of the incident with (b)(7)(C) and other related incidents involving (b)(7)(C) could not provide the exact date of the summary or when he gave it to the ECP, but referenced the SAPN (b)(7)(C) and the date of the incident with (b)(7)(C) related that he did not report the contents of the document either to his HBPP supervisors or to the NRC (Exhibit 3, pp. 28 and 29).

7c

(b)(7)(C) was interviewed and advised that he was not aware of the fact that (b)(7)(C) had received a (b)(7)(C) nor that he was subsequently (b)(7)(C). Further, (b)(7)(C) was allowed to review the document that (b)(7)(C) alleged to have provided to him (Exhibit 5), and when questioned regarding receipt of the document (b)(7)(C) advised that to the best of his knowledge, he had not received the document. (b)(7)(C) advised that had he received the document, it would have been placed into the ECP file for use during any investigation. (b)(7)(C) recalled some of the content of the document since he conducted an investigation into the (b)(7)(C) incident. (b)(7)(C) advised that he would need to consult with (b)(7)(C) ECP, DCP, regarding any additional details (Exhibit 8, pp. 10-18).

7c

During an interview of (b)(7)(C) he advised that he had been made aware of the incident involving (b)(7)(C) from NRC:RIV via an allegation referral dated September 28, 2005. (b)(7)(C) advised of a number of issues and anonymous letters received involving the HBPP (b)(7)(C) advised that the allegations involved an extra marital affair between (b)(7)(C) and (b)(7)(C) Louisiana Energy Services, and that (b)(7)(C) subsequently was promoted (Exhibits 9, pp. 8-11). (b)(7)(C) was able to review Exhibit 5 and commented that he did not recall ever receiving this document from (b)(7)(C) but was somewhat familiar with some of the issues. (b)(7)(C) advised that every document that the ECP receives is either scanned, hand-typed or copied into their files. Therefore, (b)(7)(C) advised that he would conduct a word search using several points from Exhibit 5, on their S: drive, and would be able to validate his answer 100 percent as to whether or not ECP had received the (b)(7)(C) document. Further, (b)(7)(C) advised that he and (b)(7)(C) performed a physical search of the ECR File 05-02, and did not find the (b)(7)(C) document (Exhibit 9, pp. 12-17).

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On November 12, 2009, (b)(7)(C) provided an email (Exhibit 10) to OI:RIV confirming that a computer search failed to locate any pertinent documents. (b)(7)(C) concluded that the ECP does not have the document (Exhibit 5) allegedly generated from (b)(7)(C)

7c

Unfavorable Action Taken Against (b)(7)(C)

(b)(7)(C)

7c

On (b)(7)(C) committed another performance related error (b)(7)(C) and (b)(7)(C) (Exhibit 7).

7c

Did the Unfavorable Action Result from (b)(7)(C) Engaging in a Protected Activity?

During interviews with (b)(7)(C) but for the purposes of this report she will remain (b)(7)(C) and (b)(7)(C)

(b)(7)(C)

at HBPP, advised that both he and (b)(7)(C) were made aware of the incident with (b)(7)(C) immediately after it happened, but (b)(7)(C) never reported the incident to them. (b)(7)(C) advised that he was not aware of any problems between (b)(7)(C) and (b)(7)(C) and did not believe that (b)(7)(C) was after (b)(7)(C) job for any reason (Exhibit 11, pp. 11-13, 34-35). (b)(7)(C) HBPP, confirmed that she failed to re-activate the alarm on the refueling building door prior to compensatory measure, but it was not intentional. (b)(7)(C) recalled that (b)(7)(C) by both (b)(7)(C) and (b)(7)(C) could not recall if (b)(7)(C) was on shift with her the night of the incident or if he notified anybody about the incident. (b)(7)(C) advised that (b)(7)(C) never communicated to her that he was out to get (b)(7)(C) (Exhibit 12, pp. 10-21).

7c

(b)(7)(C) HBPP, advised that he was (b)(7)(C) and worked with him for approximately (b)(7)(C) (b)(7)(C) was aware of the (b)(7)(C) that (b)(7)(C) received from (b)(7)(C) and (b)(7)(C) helped work (b)(7)(C) through (b)(7)(C) (b)(7)(C) advised the company uses the action plan as a disciplinary process for an individual who continues to make mistakes, to list those past mistakes, and to warn of termination if mistakes persist. (b)(7)(C) recalled that he was totally surprised when (b)(7)(C) brought him into the office and gave him a file with (b)(7)(C) mistakes and had him (b)(7)(C) read the letter (Exhibit 6) aloud. (b)(7)(C) stated that (b)(7)(C) told him, "I did the work, now it's your turn;..." and handed him (b)(7)(C) file (Exhibit 13, p. 8). (b)(7)(C) advised that (b)(7)(C) had been placed on probation for 6 months, and he was supposed to work with (b)(7)(C) According to (b)(7)(C) did well on probation, but had an incident involving a malfunctioning door. (b)(7)(C) did not think it should have been (b)(7)(C) (b)(7)(C) over the incident. (b)(7)(C) opined that he believed that

7c

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(b)(7)(C) was trying to fire (b)(7)(C) based on his quoted comments, "I did the work, now it's your turn..." (b)(7)(C) advised that their (b)(7)(C) and (b)(7)(C) relationship was "rocky." (b)(7)(C) said he felt as if (b)(7)(C) did not want (b)(7)(C) employed at HBPP and that he was working a process to eventually have (b)(7)(C). However, when questioned regarding (b)(7)(C) statement that he (b)(7)(C) made to him, "he was trying to get rid of me and (b)(7)(C) [referring to (b)(7)(C) he (b)(7)(C) did not recall making that statement to (b)(7)(C) opined that (b)(7)(C) had grown impatient with (b)(7)(C) and no longer wanted him employed at HBPP. Therefore, (b)(7)(C) believed that as (b)(7)(C) made mistakes (b)(7)(C) would follow up on those mistakes with an action plan, and used a small mistake (b)(7)(C) advised that he also has been through this process of being placed on probation and having to reapply for his job (Exhibit 13, pp. 8-17, 26-32).

7c

(b)(7)(C) HBPP, advised that the relationship between (b)(7)(C) and (b)(7)(C) was nonexistent, full of problems and lacked of trust; however, (b)(7)(C) opined that he and most of the (b)(7)(C) felt the same way towards (b)(7)(C). When (b)(7)(C) was questioned regarding a statement that he made to (b)(7)(C) "Well, "It took him three years to build a case on you, and he finally did it", he advised that he could not recall making that statement to (b)(7)(C) recalled being told by (b)(7)(C) about the incident when (b)(7)(C) gave him (b)(7)(C) older (b)(7)(C) and, according to (b)(7)(C) was told by (b)(7)(C) "to get him" (Exhibit 14, pp. 14, 28-30).

7c

(b)(7)(C) HBPP, advised that according to (b)(7)(C) may have been "targeted" or treated unfairly. However, (b)(7)(C) advised that all of the incidents where (b)(7)(C) received a (b)(7)(C) or were valid, documented incidents, and further stated that he would have issued a (b)(7)(C) to (b)(7)(C) for the roving incident. (b)(7)(C) advised that each employee had a personnel file, but he recalled (b)(7)(C) telling him that some files had been discarded (b)(7)(C) [NFI] of the files (Exhibit 15, pp. 23-31).

7c

(b)(7)(C) HBPP, advised that (b)(7)(C) was a below average performer while assigned to the (b)(7)(C) further advised that he (b)(7)(C) on several occasions regarding his below average performance. (b)(7)(C) advised that he was aware of the incident with (b)(7)(C) on (b)(7)(C) because he learned about it through the corrective action program under SAPN (b)(7)(C) (b)(7)(C) advised that he was not aware of any attempt to cover up the incident by (b)(7)(C). Further, (b)(7)(C) was not aware of any incident where (b)(7)(C) communicated to him (b)(7)(C) that he wanted (b)(7)(C) however, (b)(7)(C) opined that (b)(7)(C) through his poor job performance and failure to follow policy [documented by Exhibit 17], was subsequently (b)(7)(C) by (b)(7)(C) said there was no truth to (b)(7)(C) assertions that (b)(7)(C) was retaliating against him for the past 3 years. (b)(7)(C) advised that (b)(7)(C) not reflect the other "laundry list" of things [NFI] that never made it into his file (Exhibit 16, pp. 9-18, 23-28, 39).

7c

AGENT'S NOTE: On January 22, 2010, (b)(7)(C) PG&E, contacted OI:RIV and advised that both (b)(7)(C) and (b)(7)(C) had been

7c

(b)(7)(C)  
(b)(7)(C) Those investigations were provided to OI:RIV as

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background information items and will remain in case file as they are unrelated to this investigation.

7c During the re-interview of (b)(7)(C) by OI:RIV on March 9, 2010, he remained consistent with his previous testimony that (b)(7)(C) had no conversations with him pertaining to him (b)(7)(C) "out to get" or (b)(7)(C) for retaliation over the (b)(7)(C) (Exhibit 18, p. 16).

7c (b)(7)(C) was interviewed and advised that, due to work performance issue with (b)(7)(C) he kept his personnel file active for some time after the normal one year period when the employee's personnel file would be emptied. (b)(7)(C) provided summary documentation (Exhibit 17 and 20) pertaining to the previous employment history issues of (b)(7)(C) that had been previously taken from his personnel file. However, (b)(7)(C) advised (b)(7)(C) personnel file did not exist, because whoever his supervisor was at the time (b)(7)(C) would have probably emptied his personnel file when he (b)(7)(C) and the file was no longer available. (b)(7)(C) referred to two notebooks that (b)(7)(C) provided to OI:RIV for review and advised that most of (b)(7)(C) personnel file would have been turned into three PDF files. A review of these notebooks by OI:RIV did not contain any of (b)(7)(C) performance evaluations (Exhibit 19, pp. 10-16).

7c AGENT'S NOTE: OI:RIV made an official request for (b)(7)(C) personnel file and was informed that at present (b)(7)(C) file could not be located, but additional searches would take place. The two notebooks referred to in (b)(7)(C) testimony did not contain performance evaluations, but will be maintained in the case file. No additional personnel information has been received by OI:RIV.

7c (b)(7)(C) advised that he did not destroy any of (b)(7)(C) personnel file, nor did he direct (b)(7)(C) to destroy any documents pertaining to (b)(7)(C) personnel file. (b)(7)(C) advised that he was immediately aware of the SAPN (b)(7)(C) incident with (b)(7)(C) (b)(7)(C) and he initiated a logable report on the incident. (b)(7)(C) said (b)(7)(C) received coaching and counseling from him. (b)(7)(C) advised that he never falsified any documents pertaining to the incident. (b)(7)(C) offered no excuses for the 4 month lag in writing the (b)(7)(C) claiming that he probably had a huge backlog of SAP's to write (Exhibit 19, pp. 19-27).

7c (b)(7)(C) was advised that (b)(7)(C) made assertions that he (b)(7)(C) placed him on probation with (b)(7)(C) as retaliation for reporting of the (b)(7)(C) incident 3 years earlier. (b)(7)(C) advised that was not the case, and that he keeps track of what his employees do wrong, and if it accumulates to a certain point, he reviews the matter with his managers and HR. (b)(7)(C) advised that he was not aware that (b)(7)(C) reported the incident to (b)(7)(C) (Exhibit 19, pp. 34-36).

7c (b)(7)(C) reviewed the three incidents contained in (b)(7)(C) (b)(7)(C) [Exhibit 20] and did not recall seeing any text in the blocks for (b)(7)(C) input in reference to how (b)(7)(C) was doing on probation. (b)(7)(C) advised that in making his decision (b)(7)(C)

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7c (b)(7)(C) factor on (b)(7)(C) performance (Exhibit 19, pp. 40-45).

7c (b)(7)(C) remembered that he had called (b)(7)(C) into his office and gave him the file on (b)(7)(C) containing (b)(7)(C) but did not recall making the statement to him, "I did the work, now it's your turn ...," referring to (b)(7)(C) advised that (b)(7)(C) claim was entirely false, and he refers to the code [Code of Federal Regulations] which determines how he interacts with his employees. (b)(7)(C) proclaimed that if you did not abide by the code, then an employee would be punished and an equivalent job performance evaluation would be written for the employee (Exhibit 19, pp. 58-60).

(b)(7)(C) was shown (b)(7)(C) (Exhibits 6 and 7) and advised that he had not seen the documents. (b)(7)(C) advised that the ECP typically collected documents (b)(7)(C) Further (b)(7)(C) said that he was not aware of the events that occurred on

(b)(7)(C)

7c (b)(7)(C) advised that at no time did he have any discussions with (b)(7)(C) regarding (b)(7)(C) desire to have (b)(7)(C) or that (b)(7)(C) had been after (b)(7)(C) for the past 3 years and was using the three events listed above to get (b)(7)(C) (b)(7)(C) Lastly, (b)(7)(C) advised that with (b)(7)(C) investigations of HBPP, and viewing (b)(7)(C) as part of the (b)(7)(C) had not been involved in inappropriate actions, falsifying documents or any other willful violations (Exhibit 9, pp. 27-34).

(b)(7)(C) HBPP, advised that he was familiar with (b)(7)(C) issues, but had not conducted any investigations into his (b)(7)(C) issues prior to the (b)(7)(C)

7c (b)(7)(C) advised that he discussed the event with (b)(7)(C) who provided an explanation that he (b)(7)(C) had not properly (b)(7)(C) Accordingly, (b)(7)(C) then accompanied (b)(7)(C) to pull the computer logs and they identified that he had not properly responded and, as a result, he (b)(7)(C) decided (b)(7)(C) related that he was aware that the door alarm on the SAS had been malfunctioning for approximately 3 weeks, but all the other (b)(7)(C) had responded appropriately. (b)(7)(C) confirmed he did consider the malfunctioning door as a mitigating factor, and that (b)(7)(C) had wanted to bring in (b)(7)(C) past performance, but he (b)(7)(C) ruled out anything that had not been properly documented in (b)(7)(C) file. (b)(7)(C) was questioned as to whether or not (b)(7)(C) attempted to interject any of (b)(7)(C) assertions regarding (b)(7)(C) or if (b)(7)(C) openly claimed to want (b)(7)(C) for past related issues as retaliation; however, (b)(7)(C) responded in the negative. (b)(7)(C) advised that he was aware that (b)(7)(C) was not in favor of (b)(7)(C) (Exhibits 21, pp. 6-18).

7c In summary, the testimonial evidence of (b)(7)(C) and (b)(7)(C) disclosed that they were not aware of (b)(7)(C) safety concern he raised in a document (Exhibit 5), and that HBPP/DCPP management was aware of (b)(7)(C) shortly after it occurred. While some of the testimony indicated that (b)(7)(C) had grown impatient with (b)(7)(C) employment as a (b)(7)(C) it appears that (b)(7)(C) relied on (b)(7)(C) documented poor performance issues by placing him on a (b)(7)(C) and if his performance did not improve the (b)(7)(C) Testimonial

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TC evidence did not support (b)(7)(C) assertions that (b)(7)(C) took 3 years to work a case against him in retaliation for reporting safety concerns. (b)(7)(C) failed to meet the requirement for (b)(7)(C) and (b)(7)(C) (b)(7)(C) was based on a legitimate business reason and not on any retaliatory animus.

Conclusions

TC Based on the evidence developed during this investigation, the allegation that (b)(7)(C) was the subject of discrimination for raising safety concerns was not substantiated.

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigation Status Record, dated October 7, 2009 (1 page).
2	Branch Evaluation, Plan & Recommendation, dated October 5, 2009 (8 pages).
3	Transcript of Interview with (b)(7)(C) dated April 2, 2009 (55 pages).
4	Prima Facie Checklist from (b)(7)(C) dated May 29, 2009 (2 pages).
5	Document from (b)(7)(C) dated (b)(7)(C) (1 page).
6	Pacific Gas & Electric (b)(7)(C) dated (b)(7)(C) (2 pages).
7	(b)(7)(C) on (b)(7)(C) signed by (b)(7)(C) dated (b)(7)(C) (1 page).
8	Transcript of Interview with (b)(7)(C) dated November 12, 2009 (22 pages).
9	Transcript of Interview with (b)(7)(C) dated November 12, 2009 (39 pages).
10	Email from (b)(7)(C) dated (b)(7)(C) (1 page).
11	Transcript of Interview with (b)(7)(C) dated November 6, 2009 (38 pages).
12	Transcript of Interview with (b)(7)(C) dated November, 6, 2009 (23 pages).
13	Transcript of Interview with (b)(7)(C) dated November 9, 2009 (41 pages).
14	Transcript of Interview with (b)(7)(C) dated November 9, 2009 (40 pages).
15	Transcript of Interview with (b)(7)(C) dated November 10, 2009 (33 pages).
16	Transcript of Interview with (b)(7)(C) dated November 10, 2009 (43 pages).
17	Performance History of (b)(7)(C) dated (b)(7)(C) (4 pages).
18	Transcript of Interview with (b)(7)(C) dated March 9, 2010 (31 pages).
19	Transcript of Interview with (b)(7)(C) dated November 10, 2009 (70 pages).
20	Performance Action Plan of (b)(7)(C) dated (b)(7)(C) (2 pages).
21	Transcript of Interview with (b)(7)(C) dated November 12, 2009 (24 pages).

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