



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

July 15, 2011

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

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

SUBJECT: HUMBOLDT BAY – DISCRIMINATION AGAINST A (b)(7)(C)
(b)(7)(C) FOR RAISING SAFETY CONCERNS
(CASE NO. 4-2011-020/RIV-2010-A-0013)

7c

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.

Neither this memorandum nor the report may be released outside the NRC without the permission of the Director, OI. Please ensure that any internal office distribution of this report is controlled and limited only to those with a need to know and that they are aware of the sensitivity of its contents. Treat as "Official Use Only - OI Investigation Information."

Enclosure:

cc w/enclosure:
R. Zimmerman, OE

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

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FOIA: 2011-020

A-H

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Distribution:
s/f (4-2011-020)

cff
(b)(7)(C) OI:HQ

DOCUMENT: S:\OIF\2011CASES\Closed Cases

OFFICE	OI:RIV	OI:RIV:FOD		
	(b)(7)(C)	CHolland <i>CH</i>		
DATE	<i>07/14/2011</i>	<i>07/14/2011</i>		

7c

OFFICIAL RECORD COPY

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Title: HUMBOLDT BAY

7c DISCRIMINATION AGAINST A
SAFETY CONCERNS

(b)(7)(C)

FOR RAISING

Licensee:

Pacific Gas & Electric
One Market, Spear Tower
San Francisco, CA 94105

Docket No.: 05000133

Allegation No.: RIV-2010-A-0013

7c (b)(7)(C)

(b)(7)(C)

Special Agent

Office of Investigations
Field Office, Region III

Case No.: 4-2011-020

Report Date: July 15, 2011

Control Office: OI:RIV

Status: CLOSED

Reviewed and Approved by:

Crystal D. Holland

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

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SYNOPSIS

7c This investigation was initiated on January 14, 2011, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region IV, to determine whether a (b)(7)(C) at Pacific Gas & Electric Company's Humboldt Bay Power Plant (HBPP) was subjected to discrimination for reporting safety concerns.

7c Based on the evidence developed, the allegation that a (b)(7)(C) at HBPP was subjected to discrimination for reporting safety concerns is not substantiated.

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Case No. 4-2011-020

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Case No. 4-2011-020

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TESTIMONIAL EVIDENCE

7c

	<u>Exhibit</u>
(b)(7)(C) Humboldt Bay Power Plant (HBPP).....	13
(b)(7)(C) HBPP.....	7
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DOCUMENTARY EVIDENCE

EXHIBIT

76

Email and attachment, dated (b)(7)(C) sent from (b)(7)(C) (b)(7)(C) Humboldt Bay Power Plant (HBPP), to (b)(7)(C) (b)(7)(C) HBPP 4

Pacific Gas & Electric Company (PG&E) Memorandum, (b)(7)(C) (b)(7)(C) RE: (b)(7)(C) 5

PG&E Memorandum, (b)(7)(C) (b)(7)(C) RE: (b)(7)(C) HBPP 6

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DETAILS OF INVESTIGATION

Applicable Regulations

10 CFR 72.10: Employee Protection (2010 Edition)

10 CFR 72.12: Deliberate Misconduct (2010 Edition)

Purpose of Investigation

7c This investigation was initiated on January 14, 2011, by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region IV (RIV), to determine whether (b)(7)(C) at Pacific Gas & Electric's Humboldt Bay Power Plant (HBPP), was subject to discrimination by management for raising safety concerns [Allegation No. RIV-2010-A-0013] (Exhibit 1).

Background

7c On January 28, 2010, (b)(7)(C) Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, NRC, RIV, and (b)(7)(C) (b)(7)(C) Division of Reactor Safety, NRC, RIV, received an allegation from (b)(7)(C) that he was subject to discrimination by HBPP management for raising safety concerns.

7c According to (b)(7)(C) from 2008 until his (b)(7)(C) he "persistently" raised concerns to HBPP management regarding the (b)(7)(C) for the independent spent fuel storage installation (ISFSI) at HBPP. (b)(7)(C) alleged that he reported to (b)(7)(C) then the (b)(7)(C) of HBPP, and others in HBPP management that the ISFSI (b)(7)(C) did not meet NRC requirements, including problems with the (b)(7)(C) (b)(7)(C) reported that as a result of raising these issues, his employment (b)(7)(C) (b)(7)(C) The technical issues raised by (b)(7)(C) were investigated under OI Case No. 4-2010-029.

7c On February 22, 2010, the RIV Allegation Review Board (ARB) convened to discuss (b)(7)(C) allegation and determined he should be 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 August 18, 2010, the Allegation Coordination and Enforcement Staff (ACES), RIV, notified OI:RIV that the licensee had declined to participate in the ADR process. ACES requested that OI:RIV initiate an investigation under OI Case No. 4-2010-073 to determine whether (b)(7)(C) was subjected to discrimination for reporting safety concerns. A Prima Facie Checklist was provided by ACES.

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5/7c

On September 15, 2010, (b)(7)(C) was interviewed by OI and, based on a review of the transcript of the interview by Regional Counsel, it was determined that (b)(7)(C) (b)(7)(C) The case was then closed on December 1, 2010.

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On January 12, 2011, the ARB reconvened and determined that based on discussions with the Office of Enforcement, (b)(7)(C) provided sufficient information during his interview to continue to investigate his allegation that he was subjected to discrimination. Consequently, OI reopened this investigation on January 14, 2011 under OI Case No. 4-2011-020 (Exhibit 2).

Agent's Analysis

Protected Activity

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(b)(7)(C) related that he had consistently raised concerns regarding the (b)(7)(C) at HBPP to senior management, including (b)(7)(C) then the (b)(7)(C) and (b)(7)(C) at the time the (b)(7)(C) According to (b)(7)(C) when he was promoted to (b)(7)(C) he identified (b)(7)(C) (b)(7)(C) problems which involved (b)(7)(C) and added that some of these problems were in violation of NRC requirements. Furthermore, (b)(7)(C) complained that he did not receive proper support from management in resolving these issues. He continued to raise these concerns until (b)(7)(C) (Exhibit 1; Exhibit 2, pp. 2, 4, 8; Exhibit 3, pp. 10-12, 16-33, 53-55).

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

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(b)(7)(C) related he arrived at HBPP in (b)(7)(C) as the (b)(7)(C) (b)(7)(C) stated he was aware of concerns that (b)(7)(C) raised regarding (b)(7)(C) (b)(7)(C) All of these, according to (b)(7)(C) were documented in the corrective action program (Exhibit 10, pp. 7-8, 14).

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(b)(7)(C) related that he was involved in many discussions with (b)(7)(C) concerning the (b)(7)(C) at HBPP and was unaware of any concerns or criticism of the operation by (b)(7)(C) (Exhibit 8, pp. 9-10, 16-17).

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(b)(7)(C) stated he was unaware of (b)(7)(C) personally raising concerns about the site's (b)(7)(C) and he did not recall (b)(7)(C) being outspoken in his criticism of the (b)(7)(C) at HBPP (Exhibit 9, pp. 10, 13-14).

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

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(b)(7)(C) stated that he was (b)(7)(C) (Exhibit 3, p. 4).

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

7c

(b)(7)(C) sometime in

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(b)(7)(C) At that time he worked with (b)(7)(C) HBPP, with (b)(7)(C) (b)(7)(C) According to (b)(7)(C) he and (b)(7)(C) were "struggling" with these duties since there were few other people on site who were able to assist them in their efforts. (b)(7)(C) added that in 2007, when the plant's fossil operations were divided between decommissioning and spent fuel transfer, the (b)(7)(C) was altered to accommodate the changes. (b)(7)(C) explained that senior management, namely (b)(7)(C) seemed to favor him over (b)(7)(C) and it appeared to (b)(7)(C) that (b)(7)(C) was being phased out of management's inner circle.

7c

(b)(7)(C)

During this entire time, according to (b)(7)(C) he remained engaged in (b)(7)(C) (b)(7)(C) and focused on improving the condition of the (b)(7)(C). This included writing corrective actions. (b)(7)(C) contended that despite the (b)(7)(C) related issues that he and (b)(7)(C) raised, they were underappreciated by management staff; particularly (b)(7)(C) (Exhibit 3, pp. 4-55).

(b)(7)(C) related he was (b)(7)(C) after being advised by (b)(7)(C) that he had violated the company's conduct policy. (b)(7)(C) explained that his (b)(7)(C) (b)(7)(C) According to (b)(7)(C) about one month after he became the (b)(7)(C) in (b)(7)(C) he and (b)(7)(C) needed to store approximately \$100,000 worth of equipment required for the new alarm system. (b)(7)(C) stated that he, (b)(7)(C) and (b)(7)(C) were creating room in one of the security storage containers for the equipment. (b)(7)(C) recalled observing the tools and advising (b)(7)(C) to "throw it away." He remembered (b)(7)(C) remarking that the tools belonged to (b)(7)(C) (b)(7)(C) stated that the tools appeared to be "unclaimed" and suggested to (b)(7)(C) that he "get rid of it." (b)(7)(C) upon leaving the storage container, remembered seeing the tools in the back of (b)(7)(C) truck and figured that the tools would be disposed of by (b)(7)(C) recalled that a couple of days later, he was approached by the (unidentified) owner of the tools, and (b)(7)(C) advised him that the tools had been discarded. (b)(7)(C) stated that he asked (b)(7)(C) about the tools and was told that the tools were "tossed." According to (b)(7)(C) he replaced the tools with his own money which cost him approximately \$350.00. (b)(7)(C) related that in November 2009, he was interviewed by the licensee's corporate security and subsequently (b)(7)(C) (b)(7)(C) related that he was informed that he (b)(7)(C) because "some equipment came up missing, an employee was harassed over it . . . (I) knew about it, and that violated our policy on conduct" (Exhibit 3, pp. 4, 55-65).

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In his OI interview, (b)(7)(C) was asked to identify the best evidence in his view that indicates he was retaliated against by HBPP management for his safety concerns. (b)(7)(C) could not reference any particular connection and instead argued that with his background of integrity and his overall performance at the site, the circumstances should have warranted (b)(7)(C) (b)(7)(C) He inferred that such a harsh action could only be explained by factors outside of legitimate business practices (Exhibit 3, pp. 65-68).

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The events and circumstances culminating in (b)(7)(C)

(b)(7)(C) The evidence is clear that senior management, namely (b)(7)(C) and (b)(7)(C) trusted (b)(7)(C) and assisted him in career advancement even while he was raising concerns about the (b)(7)(C) According to (b)(7)(C) was a hard worker,

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having good standards and high integrity. He was not involved in promoting (b)(7)(C) to the (b)(7)(C) position in (b)(7)(C) but he was asked by (b)(7)(C) for input and "didn't disagree" with the move. (b)(7)(C) stated he preferred (b)(7)(C) over (b)(7)(C) for the position and assisted (b)(7)(C) in his new role (Exhibit 10, pp. 10-14). (b)(7)(C) related that (b)(7)(C) exhibited strong leadership skills, a good work ethic and the capability to handle more responsibility. (b)(7)(C) added that it was his decision to promote (b)(7)(C) to the (b)(7)(C) (b)(7)(C) Exhibit 8, pp. 9-12). Both (b)(7)(C) and (b)(7)(C) recalled specific challenges with the (b)(7)(C) (Exhibit 8, pp. 12-15; Exhibit 10, pp. 14-19). (b)(7)(C) related that (b)(7)(C) was never critical of the (b)(7)(C) at HBPP, and he was unaware of any deficiency in any area. According to (b)(7)(C) there were recognized vulnerabilities that were addressed relating to (b)(7)(C) for example. (b)(7)(C) added that (b)(7)(C) was on a critical path and support from contractors had been requested. (b)(7)(C) dismissed any criticism that management was not responsive to (b)(7)(C) needs and recalled offering more assistance to management with contractors relating to procedure revisions but was told by (b)(7)(C) it was not needed (Exhibit 8, pp. 14-19). (b)(7)(C) stated that any concerns (b)(7)(C) had were documented in the corrective action program. He was aware of some of the issues and specifically recalled asking (b)(7)(C) if any of the deficiencies were compromising the ability of the equipment to meet regulatory requirements. He was advised by (b)(7)(C) that all of the surveillances had been compensated with additional staff. According to (b)(7)(C) he never perceived from (b)(7)(C) that the site was not moving fast enough, and it appeared that (b)(7)(C) was satisfied that his issues were documented. (b)(7)(C) mentioned that (b)(7)(C) appointment as the (b)(7)(C) (b)(7)(C) had been a temporary move; however, when he later became (b)(7)(C) he made the move a permanent one based on (b)(7)(C) productivity (Exhibit 10, pp. 14-19, 29-30).

7c

(b)(7)(C) stated that he had a meeting with (b)(7)(C) HBPP concerning an incident that eventually led to (b)(7)(C) According to (b)(7)(C) (b)(7)(C) met with him in late (b)(7)(C) and advised him that tools had been stolen the previous year at the site. (b)(7)(C) told him that (b)(7)(C) had stolen the tools, and (b)(7)(C) was aware of it. Furthermore, (b)(7)(C) related that (b)(7)(C) attempted to coerce him to replace the tools with a company credit card. (b)(7)(C) learned from (b)(7)(C) that (b)(7)(C) refused and was threatened with his job. (b)(7)(C) informed (b)(7)(C) that because of this integrity issue, he was leaving his position the site. (b)(7)(C) stated he promised (b)(7)(C) that he would follow up on the allegation, and he referred it to corporate security for investigation. (b)(7)(C) recalled later being advised by the corporate investigator around the holidays in late (b)(7)(C) that the investigation revealed the allegations made by (b)(7)(C) were true. (b)(7)(C) also recalled that after (b)(7)(C) had been interviewed a second time by corporate security, he (b)(7)(C) visited (b)(7)(C) and told him that he (b)(7)(C) According to (b)(7)(C) admitted that (b)(7)(C) took the tools and added that on the day of the event he saw (b)(7)(C) but the tools in the back of (b)(7)(C) truck. (b)(7)(C) told (b)(7)(C) that he purchased tools to replace the ones stolen with the hope of making "this whole thing go away." (b)(7)(C) later wrote an (b)(7)(C) dated January 6, 2010, to (b)(7)(C) in which he apologized to (b)(7)(C) and Pacific Gas and Electric. (b)(7)(C) mentioned that there was a trustworthy and reliability issue and decided (b)(7)(C) (b)(7)(C) at that point. The final corporate investigation report had not been finalized and, when it was subsequently issued (b)(7)(C) learned that the incident was more egregious than previously believed. (b)(7)(C) stated that

7c

(b)(7)(C)
The latter factor was one that (b)(7)(C) failed to mention to

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7c (b)(7)(C) related he decided (b)(7)(C) based on his own conversation with (b)(7)(C) and the corporate investigation findings (Exhibits 4, 5, 6; Exhibit 10, pp. 30-48).

Many of the events and circumstances involving (b)(7)(C) actions were corroborated by other witnesses in this investigation.

7c (b)(7)(C) Among these items was a table saw and another combination type tool which cost approximately \$400.00. According to (b)(7)(C) a secure place was needed to secure the tools, and these tools were subsequently stored in a locked security trailer on site. (b)(7)(C) recalled trying to retrieve the items later in (b)(7)(C). When she discovered the items missing, she initially asked (b)(7)(C) and he referred her to (b)(7)(C). (b)(7)(C) related that (b)(7)(C) questioned the existence of the missing tools and demanded the sales slip to ascertain her truthfulness. (b)(7)(C) was able to produce the sales slip later. She asserted that a couple of weeks later, (b)(7)(C) met with her and informed her that he located the tools somewhere on site. (b)(7)(C) mentioned that the tools appeared to be different and figured they were "repurchased" (Exhibit 13, pp. 6-17).

AGENT'S NOTE: The original purchase receipt was obtained by licensee counsel which indicated that the tools were purchased from Sears on December 30, 2005 for \$442.65.

7c (b)(7)(C) corroborated (b)(7)(C) testimony and added he pushed the matter after the tools were discovered missing by sending an email to everyone requesting a return of the items (Exhibit 12, pp. 9-23). (b)(7)(C) HBPP, recalled some of the security operations were being upgraded at the site, and management was willing to accommodate those changes. As far as the events relating to the missing tools, (b)(7)(C) recalled an event in either October or November – he was not sure what year – when he was cleaning out the security "C-van." He related that (b)(7)(C) and (b)(7)(C) were present also at one point and one of them kicked one of the tool boxes and commented that they ought to take the tools "as rent." (b)(7)(C) stated that he told them "don't even think about it," and added that the tools belonged to one of the site's committees. (b)(7)(C) departed soon afterward and left (b)(7)(C) and (b)(7)(C) alone. According to (b)(7)(C) he learned from (b)(7)(C) a few days later about the missing tools, and how (b)(7)(C) tried to make (b)(7)(C) purchase the tools. (b)(7)(C) related that he spoke with (b)(7)(C) over the telephone about the missing tools and was told by (b)(7)(C) that he would "destroy" (b)(7)(C) if he ever said anything about his involvement. (b)(7)(C) stated that after being threatened, he decided that he would seek other employment (Exhibit 7, pp. 7-26).

The evidence in this investigation is clear that (b)(7)(C) was

(b)(7)(C)

7c (b)(7)(C) was both a legitimate and practical business decision and was totally unrelated to whatever concerns he had about the (b)(7)(C) at the site. While (b)(7)(C) wrote corrective actions concerning (b)(7)(C) these concerns were shared by management, and none of these were used as a cause for retaliation in any form. Moreover, the corrective actions produced by (b)(7)(C) were an expected action for someone who had assigned duties as (b)(7)(C). (b)(7)(C) had been seen by (b)(7)(C) and (b)(7)(C) as an effective management team member and, perhaps more importantly, was promoted during

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7c the time he was resolving issues in the (b)(7)(C) In the final analysis, (b)(7)(C) series of bad decision-making concerning the tool event and (b)(7)(C) (b)(7)(C) rightly raised questions about his trustworthiness and reliability and left management with little alternative other than (b)(7)(C)

Conclusion

7c Based on the evidence developed, the allegation that a (b)(7)(C) at HBPP was subjected to discrimination for reporting safety concerns is not substantiated.

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SUPPLEMENTAL INFORMATION

7c The matter involving (b)(7)(C) allegations of discrimination is also being investigated by the Department of Labor's Occupational Safety and Health Administration. The allegation involves a violation of Section 211 of the Energy Reorganization Act of 1978. The case is being investigated by (b)(7)(C) under Case No. (b)(7)(C)

7c On March 8, 2011, (b)(7)(C) HBPP, was interviewed regarding the events in this investigation. (b)(7)(C) did not provide any testimony of any evidentiary value (Exhibit 11).

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigative Status Record, OI Case No. 4-2011-020, dated January 14, 2011 (1 page).
2	Allegation Review Board Summary and related follow-up, dated January 12, 2011 (9 pages).
3	Transcript of Interview with (b)(7)(C) dated September 15, 2010 (73 pages).
4	Email and attachment, dated (b)(7)(C) (2 pages).
5	PG&E Corporate Security Memorandum re: (b)(7)(C) dated (b)(7)(C) (2 pages).
6	PG&E Corporate Security Memorandum re: (b)(7)(C) dated (b)(7)(C) (3 pages).
7	Transcript of Interview with (b)(7)(C) dated March 8, 2011 (35 pages).
8	Transcript of Interview with (b)(7)(C) dated March 8, 2011 (28 pages).
9	Transcript of Interview with (b)(7)(C) dated March 8, 2011 (20 pages).
10	Transcript of Interview with (b)(7)(C) dated March 8, 2011 (52 pages).
11	Transcript of Interview with (b)(7)(C) dated March 8, 2011 (25 pages).
12	Transcript of Interview with (b)(7)(C) dated March 8, 2011 (29 pages).
13	Transcript of Interview with (b)(7)(C) dated March 8, 2011 (19 pages).

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