



The Secretary of Energy  
Washington, D.C. 20585

June 1, 2011

Mr. William E. Reukauf  
Associate Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, NW, Suite 218  
Washington, DC 20236-4505

SUBJECT: Special Inquiry on Office of Special Counsel Whistleblower Disclosure

Dear Mr. Reukauf:

On March 23, 2011, the U.S. Office of Special Counsel requested that the U.S. Department of Energy investigate a whistleblower disclosure that employees at the Western Area Power Administration's (Western) Desert Southwest Region were engaged in conduct that may constitute violation of law, rule or regulation; gross mismanagement; and, gross waste of funds. Specifically, the disclosure alleged that Western:

- Improperly provided 90 megawatts per hour (MWh) of free electric transmission to Griffith Dynegy Energy, LLC (Griffith), a full-service energy provider; and,
- Violated Federal Energy Regulatory Commission (FERC) Order Nos. 888 and 889 by continuing to allow Griffith to receive free transmission.

This matter was referred to the U.S. Department of Energy's Inspector General for review. The enclosed report, *Special Inquiry on Office of Special Counsel Whistleblower Disclosure File No. DI-10-1231: Allegations Regarding Western Area Power Administration's Desert Southwest Region* sets forth the results of the review. The Inspector General concluded that the allegations in this case could not be substantiated.

Should you have questions regarding this issue or require additional information, please contact Mr. Sean Lev, Acting General Counsel, at (202) 586-5281.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Chu".

Steven Chu

Enclosure



U.S. Department of Energy  
Office of Inspector General  
Office of Audits and Inspections

# Special Report

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Special Inquiry on Office of Special  
Counsel Whistleblower Disclosure File No.  
DI-10-1231: Allegations Regarding  
Western Area Power Administration's  
Desert Southwest Region

OAS-SR-11-01

May 2011



**Department of Energy**  
Washington, DC 20585

May 18, 2011

MEMORANDUM FOR THE SECRETARY

FROM:   
Gregory H. Friedman  
Inspector General

SUBJECT: INFORMATION: "Special Inquiry on Office of Special Counsel Whistleblower Disclosure File No. DI-10-1231: Allegations Regarding Western Area Power Administration's Desert Southwest Region" Report Number: OAS-SR-11-01

INTRODUCTION

On March 23, 2011, the U.S. Office of Special Counsel requested that you investigate a whistleblower disclosure that employees at the Western Area Power Administration's (Western) Desert Southwest Region were engaged in conduct that may constitute violation of law, rule or regulation; gross mismanagement; and, gross waste of funds. Specifically, the disclosure alleged that Western:

- Improperly provided 90 megawatts per hour (MWh) of free electric transmission to Griffith Dynegy Energy, LLC (Griffith), a full-service energy provider; and,
- Violated Federal Energy Regulatory Commission (FERC) Order Nos. 888 and 889 by continuing to allow Griffith to receive free transmission.

The Special Counsel requested that you provide a report of findings on the matter within 60 days of your receipt of the complaint. Your office subsequently delegated the investigation of these allegations to the Office of Inspector General. As a result, we initiated a fact-finding inquiry into these matters. To this end, we interviewed key Western officials; reviewed pertinent contracts; and, analyzed related laws, regulations, policies and procedures.

RESULTS OF SPECIAL INQUIRY

The allegations could not be substantiated. Specifically, we found no evidence that Western provided 90 MWh of free electric transmission to Griffith, nor did we find that Western was in violation of FERC Order Nos. 888 and 889.

Allegation Regarding Provision of Free Electric Transmission

The complainant alleged that Western's Operations, Maintenance, and Replacement Contract (OM&R) with Griffith, negotiated in 2009, improperly included language allowing 90 MWh of free electric transmission. The complainant further alleged that this free electric transmission represented an estimated potential revenue loss of \$1.1 million a year or a total loss of

\$33 million over a 30-year contract term. We concluded, however, that the OM&R did not provide 90 MWh of free transmission to Griffith. Rather, Western provided additional delivery points for the existing transmission capacity already purchased by Griffith through three separate transmission services contracts.

In 1999, Western and Griffith executed transmission service contracts in which Griffith purchased an aggregate of 595 MWh of transmission from the Griffith Switchyard to the Mead Substation (see Attachment for transmission corridor layout). The OM&R included an "Additional Delivery Rights" clause that provided Griffith, at no extra cost, the right to deliver 90 MWh to two different points of delivery other than the Mead substation. However, the OM&R indicated that Griffith may not exceed the 595 MWh total capacity specified in its transmission service contracts.

Despite the information provided by the complainant, evidence developed during our inquiry did not support the allegation concerning improper provision of free transmission to Western. Specifically:

- The complainant alleged that the "free transmission" clause was originally included in a 1999 Mutual Services Agreement (MSA) executed by Western and Griffith and provided an incentive for Griffith to join the Western Area Lower Colorado (WALC) Balancing Authority (Balancing Authority). We found that the 1999 MSA did include a provision for "Additional Delivery Rights" that allowed Griffith, at no extra cost, the right to deliver 90 MWh to two different points of delivery other than the Mead Substation. In our opinion, the verbiage in the MSA was ambiguous as to whether these rights provided additional transmission capacity without cost beyond what Griffith contracted for in its three separate transmission services contracts. However, Western officials informed us that the provision was not intended to provide free additional transmission and that this ambiguity was clarified in the 2009 OM&R that replaced the MSA.
- The complainant stated that when Griffith chose to leave the Balancing Authority in 2009, its departure made the original MSA null and void and that Griffith stopped paying a fee to Western for Balancing Authority services. The complainant asserted that because it was no longer paying a fee to Western, Griffith should no longer receive the free transmission. Western officials informed us, however, that Griffith's departure from the Balancing Authority did not render the MSA null and void but rather terminated a separate contract known as the WALC Control Area Agreement. The MSA documented agreements between Western and Griffith concerning the operation and maintenance of the Griffith Power Plant and Switchyard and their interconnection to the Western Transmission System. It also included miscellaneous provisions such as the one providing "Additional Delivery Rights." The MSA originally included provisions on Griffith's participation in the WALC Balancing Authority. The MSA was amended in 2002 to delete these provisions when Western and Griffith executed the WALC Control Area Agreement. In 2009, the terms and conditions of the MSA, as amended, including the "Additional Delivery Rights," remained in effect through 2039 regardless of Griffith's continued participation in the Balancing Authority.

- The complainant stated that Griffith's departure from the Balancing Authority provided the opportunity to renegotiate the contract from the previous MSA to an OM&R. We confirmed that Griffith's departure from the Balancing Authority provided an opportunity to renegotiate. In fact, due to the changed relationship between Western and Griffith, the two parties agreed to replace the MSA with the OM&R in 2009. Western officials informed us that they were no longer using MSA contracts in favor of the new OM&R contract instrument. As this was a negotiation, Western officials explained that they could not unilaterally exclude the "Additional Delivery Rights" provision from the OM&R. However, during the course of negotiation, Western and Griffith agreed to amend the provision in the OM&R to clarify that the "Additional Delivery Rights" were limited to the aggregate capacity existing in the three transmission service contracts.
- The complainant stated that there was no precedent for providing transmission services in an OM&R; it was contrary to standard practice; and, it was, therefore, improper. We found no evidence that supported the complainant's view that it was improper to include the "Additional Delivery Rights" provision in the OM&R. While it may not be standard practice to include such a provision in an OM&R contract; we could find no law, regulation, policy, or procedure that prohibits it. As previously noted, "Additional Delivery Rights" was an existing contractual obligation of the MSA that was carried forward and clarified in the new OM&R.

#### Allegation Regarding Violation of FERC Requirements

The complainant alleged that the free transmission violated FERC Order Nos. 888 and 889, which required non-discriminatory access to transmission service to ensure that suppliers have equal market access. FERC Order No. 889 requires that available transmission capacity be posted on an electronic bulletin board called the Open Access Same-time Information System (OASIS). The complainant alleged that the free transmission provided to Griffith should have been offered on the OASIS on a first come, first served basis to all of Western's customers.

We found no support for these allegations. Specifically, Western's official position is that it is not subject to the requirements of FERC Orders since it is not a public utility under the Federal Power Act. We found no evidence that contradicted Western's official position. However, the Department of Energy has an Open Access Transmission Policy which states that the Power Marketing Administrations, including Western, will comply with the principles set forth by FERC to the extent consistent with applicable law. As such, Western created and submitted to FERC an Open Access Transmission Service Tariff comparable to those required of public utilities under FERC Order No. 888. We reviewed the complainant's allegation that free transmission received by Griffith should have been offered on OASIS on a first come, first served basis. Our objective was to determine if there was a violation of Western's Tariff. As previously stated, Western asserted that it had not provided free transmission to Griffith, and therefore had not violated its own Tariff in this regard. We could find no evidence to the contrary.

During the course of our review, we identified certain unrelated matters that we are addressing separately. We also discussed the results of our inquiry with both the complainant and Western management officials.

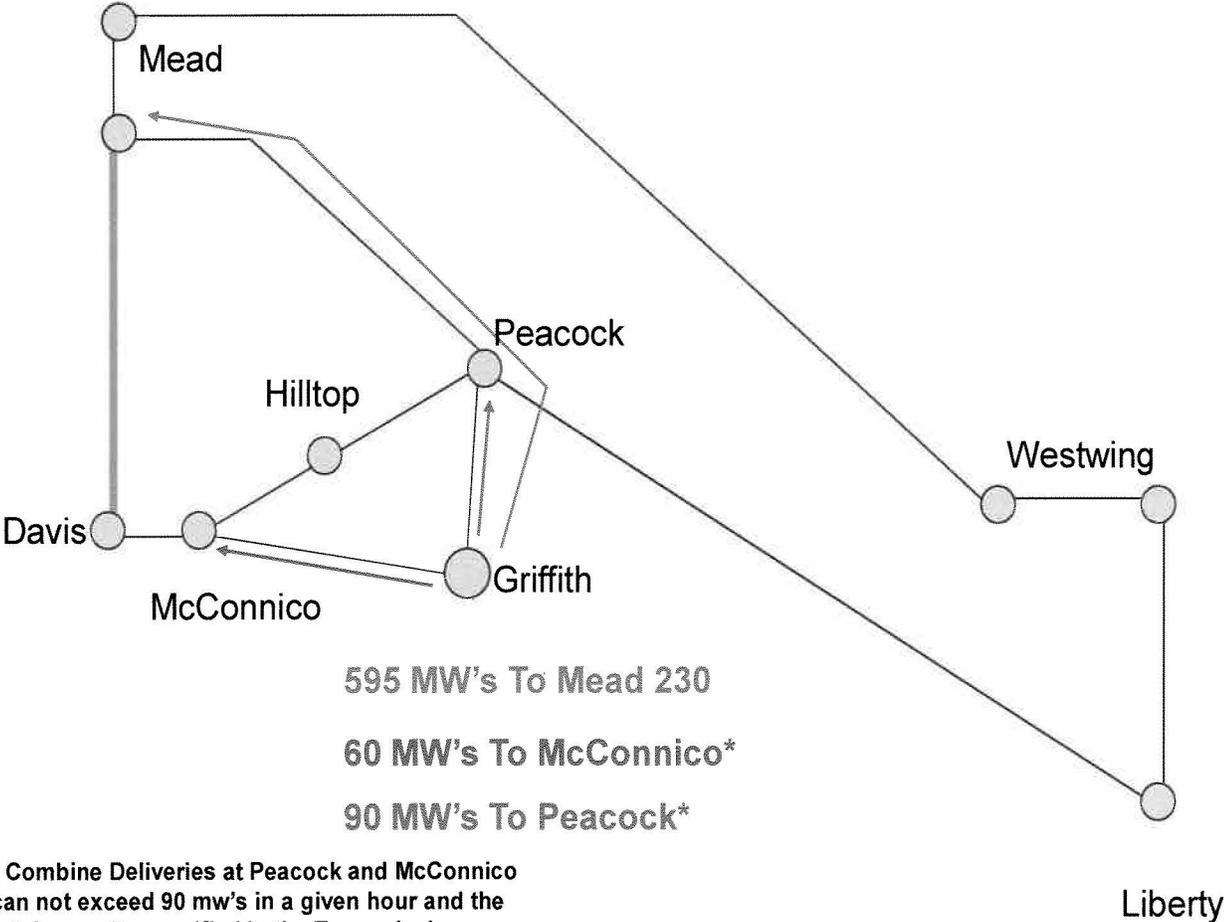
We appreciate the opportunity to review this important matter and provide you with our conclusions.

Please let me know if there are any questions.

Attachment

cc: Deputy Secretary  
Associate Deputy Secretary  
Chief of Staff  
Administrator, Western Power Administration

### Griffith's Firm Transmission Rights



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