

July 13, 2011

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

Attn: Ms. Siobhan M. Smith
Attorney, Disclosure Unit

Re: OSC File No. DI-10-1231

Dear Ms. Smith:

Pursuant to 5 U.S.C. 1213(e)(1), I respectfully request to comment on the U.S. Department of Energy (DOE), Inspector General's (IG) report findings, OAS-SR-11-01, dated May 18, 2011 (Report), which concluded that my allegations under OSC File No. DI-10-1231, could not be substantiated.

Allegation Regarding Provision of Free Electric Transmission

First bullet, first, second and fourth sentences, of the IG Report: IG summarizes that 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 incentive for Griffith to join the Western Area Lower Colorado (WALC) Balancing Authority (BA). IG agrees that the 1999 MSA provision included "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. IG states that Western officials informed them that the provision was not intended to provide free "additional" transmission and that this ambiguity was clarified in the 2009 OR&R that replaced the MSA.

Complainant Response: The original words in my allegation were specifically, "Free Transmission, and Additional Delivery Rights," not "Free Additional Transmission."

The exact language in the OM&R follows:

"21. **ADDITIONAL DELIVERY RIGHTS:**

21.1 The Contractor has entered into agreements Nos. 99-DSR-11034, 99-DSR-11035, and 99-DSR-11036 (Transmission Agreements) with Western for transmission service. In addition to the points of delivery specified in the Transmission Agreements, the Contractor may make deliveries from the Griffith 230 kV Substation up to an aggregate total of 90 MW per hour at McConnico 230 kV Substation, or Peacock 230 kV Substation, without incurring additional transmission delivery charges; provided; that the Griffith deliveries at

McConnico Substation shall not exceed 60 MW per hour and total capacity scheduled in any hour from the Griffith 230 kV Substation, inclusive of deliveries at McConnico 230kV Substation, or Peacock 230 kV Substation, shall not exceed the total capacity specified in the Transmission Agreements."

The question is clear, "How does this 90MW of "Additional Deliver Rights" get to the intended "Point of Delivery?" It is transmitted on Western's transmission system without additional transmission costs to Griffith.

Second bullet, first - third sentences, of the IG Report: IG summarizes that the complainant stated that when Griffith chose to leave the BA 2009, its departure made the original MSA null and void and that Griffith stopped paying a fee to Western for BA services. The complainant asserted that because it was no longer paying a fee to Western, Griffith should no longer receive the free transmission. IG states that Western officials informed them that Griffith's departure from the BA did not render the MSA null and void but rather terminated a separate contract known as the WALC Control Area Agreement (CAA).

Complainant Response: Griffith leaving the BA is "synonymous" with disconnecting from the Transmission System.

The MSA Contract No. 99-DSR-11010, Section 4, subsection 4.2, states, "*Griffith may terminate this Contract upon six (6) months' advance written notice given to Western. Such notice shall include the date upon which the facilities of Griffith are to be disconnected from the Transmission System, or the date upon which any superseding agreement between Western and Griffith shall take effect as may be mutually agreed upon by the Parties.*"

Third bullet, first – fifth sentences, of the IG Report: IG summarizes that the complainant stated that Griffith's departure from the BA provided the opportunity to renegotiate the contract from the previous MSA to an OM&R. IG confirmed this. IG continued that the two parties agreed to replace the MSA with the OM&R in 2009. Western officials informed IG that they were no longer using MSA contracts in favor of the new OM&R contract. Western officials explained that they could not unilaterally exclude the "Additional Delivery Rights" provision from the OM&R.

Complainant Response: It is true that Western is no longer using MSA contracts in favor of OM&R contracts. However, Western officials misled IG, "Additional Delivery Rights, and/or Transmission Services" are not permitted in an OM&R contract. It is a violation of Western's Tariff. Furthermore, Western's Tariff provides proforma documents that are exclusively used for transmission services.

Amending and clarifying the "Additional Deliver Rights" is a moot point, if it is provided for in an OM&R contract.

Forth bullet, first – fifth sentences, of the IG Report: IG summarizes that 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. IG states that they found no evidence that supported the complainant's view.

Complainant Response: Western's Open Access Transmission Tariff, which can be found on Western's external website at, <http://www.wapa.gov/sn/ops/transmission/wapaoat.pdf>. Subsection 13.4, "*the Transmission Provider shall offer a standard form for Firm Point-to-Point transmission service.*" Section 17, "*Procedures for Arranging Firm Point-To-Point Transmission Service,*" states how the transmission customers will request and receive transmission service, as also defined in 18 C.F.R. § 2.20.

Allegation Regarding Violation of FERC Requirements

IG summarizes, 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). IG further summarizes that they 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.

Complainant Response: Statement of Timothy J. Meeks, Administrator, Western Area Power Administration, U.S. Department of Energy, before the Subcommittee on Water and Power Committee on Natural Resources, U.S. House of Representatives, March 4, 2010. Page 5, Transmission – open access creates challenges, opportunities:

"We conduct transmission business in the spirit of our long-standing policy of non-discriminatory open access to our system. In 1998, Western voluntarily filed and open access transmission tariff with the FERC. Our tariff is a living document, demonstrating our commitment to abide by the same rules as the rest of industry, except where we must deviate to avoid conflicts with Federal mandates and our statutory obligations. We most recently modified our tariff on December 1, 2009. The new revised tariff was developed to comply with FERC Order No. 890 and to be consistent with Western's statutory and regulatory requirements. It addresses changes in transmission service and planning."

Closing Remarks: The IG's office should have been able to ask Western's officials questions and receive clear answers. Instead, the answers IG received convoluted their inquiry and left IG to interpret the answers they received by Western officials. Without possessing technical knowledge of the electric power industry the IG auditors were easily misled by industry language.

Thank you for the opportunity to provide my comment's to this special inquiry.

Sincerely,

Reservation priorities for existing firm service customers are provided in Section 2.2.

- (v) For any requests for Short-Term Firm Point-to-Point Transmission Service for which the Transmission Provider's business practices establish an earliest time such requests are permitted to be submitted, any requests for such service submitted within a five (5) minute window following such earliest time shall be deemed to have been submitted simultaneously during such window. If sufficient transmission capacity is not available to meet all such requests submitted within any such five (5) minute window, the otherwise applicable priorities shall apply to allocation of transmission capacity to such requests; provided that, if the otherwise applicable priorities would be to allocate transmission capacity to transmission requests on a first-come, first-served basis (i.e., in the chronological sequence in which each Transmission Customer has requested service), transmission capacity shall instead be allocated to such transmission requests pursuant to a lottery that will select the order that such requests will be processed in a non-discriminatory and non-preferential manner. The Transmission Provider shall post on its OASIS the allocation methodology and associated business practices.
- 13.3 Use of Firm Transmission Service by the Transmission Provider: The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under agreements executed on or after March 7, 1998. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of the Point-To-Point Transmission Service to make Third-Party Sales.
- 13.4 Service Agreements: The Transmission Provider shall offer a standard form Firm Point-To-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it submits a Completed Application for Long-Term Firm Point-To-Point Transmission Service. The Transmission Provider shall offer a standard form Firm Point-to-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it first submits a Completed Application for Short-Term Firm Point-to-Point Transmission Service pursuant to the Tariff. An Eligible Customer that uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved and that has not executed a Service Agreement will be deemed, for purposes of assessing any appropriate charges and penalties, to have executed the appropriate Service Agreement. The Service Agreement shall, when applicable, specify any conditional curtailment options selected by the Transmission Customer. Where the Service Agreement contains conditional curtailment options and is subject to a biennial reassessment as described in Section 15.4, the Transmission Provider shall provide the Transmission Customer notice of any changes to the curtailment conditions no less than 90 days prior to the date for imposition of new curtailment conditions. Concurrent with such notice, the Transmission

Provider shall provide the Transmission Customer with the reassessment study and a narrative description of the study, including the reasons for changes to the number of hours per year or System Conditions under which conditional curtailment may occur.

- 13.5 Transmission Customer Obligations for Facility Additions or Redispatch Costs: In cases where the Transmission Provider determines that the Transmission System is not capable of providing Firm Point-To-Point Transmission Service without (1) degrading or impairing the reliability of service to Native Load Customers, Network Customers and other Transmission Customers taking Firm Point-To-Point Transmission Service, or (2) interfering with the Transmission Provider's ability to meet prior firm contractual commitments to others, the Transmission Provider will be obligated to expand or upgrade its Transmission System pursuant to the terms of Section 15.4. The Transmission Customer must agree to compensate the Transmission Provider in advance for any necessary transmission facility additions pursuant to the terms of Section 27. To the extent the Transmission Provider can relieve any system constraint by redispatching the Transmission Provider's resources, it shall do so, provided that the Eligible Customer agrees to compensate the Transmission Provider pursuant to the terms of Section 27 and agrees to either (i) compensate the Transmission Provider for any necessary transmission facility additions or (ii) accept the service subject to a biennial reassessment by the Transmission Provider of redispatch requirements as described in Section 15.4. Any redispatch, Network Upgrade or Direct Assignment Facilities costs to be charged to the Transmission Customer on an incremental basis under the Tariff will be specified in the Service Agreement or a separate agreement, as appropriate, prior to initiating service.
- 13.6 Curtailment of Firm Transmission Service: In the event that a Curtailment on the Transmission Provider's Transmission System, or a portion thereof, is required to maintain reliable operation of such system, Curtailments will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint. If multiple transactions require Curtailment, to the extent practicable and consistent with Good Utility Practice, the Transmission Provider will curtail service to Network Customers and Transmission Customers taking Firm Point-To-Point Transmission Service on a basis comparable to the curtailment of service to the Transmission Provider's Native Load Customers. All Curtailments will be made on a non-discriminatory basis, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. Long-Term Firm Point-to-Point Service subject to conditions described in Section 15.4 shall be curtailed with secondary service in cases where the conditions apply, but otherwise will be curtailed on a pro rata basis with other Firm Transmission Service. When the Transmission Provider determines that an electrical emergency exists on its Transmission System and implements emergency procedures to Curtail Firm Transmission

or not the Transmission Customer takes service for the full term of its reservation;

- (e) The Transmission Customer provides the information required by the Transmission Provider's planning process established in Attachment P; and
- (f) The Transmission Customer has executed a Point-To-Point Service Agreement or has agreed to receive service pursuant to Section 15.3.

16.2 Transmission Customer Responsibility for Third-Party Arrangements: Any scheduling arrangements that may be required by other electric systems shall be the responsibility of the Transmission Customer requesting service. The Transmission Customer shall provide, unless waived by the Transmission Provider, notification to the Transmission Provider identifying such systems and authorizing them to schedule the capacity and energy to be transmitted by the Transmission Provider pursuant to Part II of the Tariff on behalf of the Receiving Party at the Point of Delivery or the Delivering Party at the Point of Receipt. However, the Transmission Provider will undertake Reasonable Efforts to assist the Transmission Customer in making such arrangements, including without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

17 Procedures for Arranging Firm Point-To-Point Transmission Service

17.1 Application: A request for Firm Point-To-Point Transmission Service for periods of one year or longer must contain a written Application to the appropriate Regional Office, as identified in Attachment K to the Tariff, at least sixty (60) days in advance of the calendar month in which service is to commence. The Transmission Provider will consider requests for such firm service on shorter notice when feasible. Requests for firm service for periods of less than one year shall be subject to expedited procedures that shall be negotiated between the Parties within the time constraints provided in Section 17.5. All Firm Point-To-Point Transmission Service requests should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the priority of the Application.

- 17.2 Completed Application: A Completed Application shall provide all of the information included in 18 C.F.R. § 2.20 including but not limited to the following:
- (i) The identity, address, telephone number and facsimile number of the entity requesting service;
 - (ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;
 - (iii) The location of the Point(s) of Receipt and Point(s) of Delivery and the identities of the Delivering Parties and the Receiving Parties;
 - (iv) The location of the generating facility(ies) supplying the capacity and energy and the location of the load ultimately served by the capacity and energy transmitted. The Transmission Provider will treat this information as confidential except to the extent that disclosure of this information is required by the Tariff, by Federal law, by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations;
 - (v) A description of the supply characteristics of the capacity and energy to be delivered;
 - (vi) An estimate of the capacity and energy expected to be delivered to the Receiving Party;
 - (vii) The Service Commencement Date and the term of the requested Transmission Service;
 - (viii) The transmission capacity requested for each Point of Receipt and each Point of Delivery on the Transmission Provider's Transmission System; customers may combine their requests for service in order to satisfy the minimum transmission capacity requirement;
 - (ix) A statement indicating that, if the Eligible Customer submits a Pre-Confirmed Application, the Eligible Customer will execute a Service Agreement upon receipt of notification that the Transmission Provider can provide the requested Transmission Service; and
 - (x) Any additional information required by the Transmission Provider's planning process established in Attachment P.

The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

- 17.3 **Deposit and Processing Fee:** For firm Transmission Service requests of one year or longer, a Completed Application for Firm Point-To-Point Transmission Service shall include: (1) a non-refundable processing fee of \$3,500; and (2) a deposit of either one month's charge for Reserved Capacity (not to exceed \$100,000) submitted to the Transmission Provider, or the same amount deposited into an escrow fund setup by the Eligible Customer. The application processing fee does not apply to costs to complete System Impact Studies or Facility Studies or to add new facilities. The specific requirements for the escrow fund will be posted on the Transmission Provider's OASIS. The Eligible Customer shall select one of the two options to satisfy the deposit requirement; provided, that the Transmission Customer will not be required to submit a deposit in the case of either a request for transmission service resulting only in modification to an existing Service Agreement, or a rollover of equivalent transmission service provided under either an existing Service Agreement or other existing bundled or standalone agreement executed prior to December 31, 1997. If the Application is rejected by the Transmission Provider because it does not meet the conditions for service as set forth herein, the Transmission Provider shall release the escrow fund or return the deposit, without interest. The Transmission Provider shall also release the escrow fund or return the deposit, without interest, if the Transmission Provider is unable to complete new facilities needed to provide the service. If an Application is withdrawn or the Eligible Customer decides not to enter into a Service Agreement for Firm Point-To-Point Transmission Service, the Transmission Provider shall release the escrow fund or return the deposit, without interest. Advanced payments associated with construction of new facilities are subject to the provisions of Section 19. If a Service Agreement for Firm Point-To-Point Transmission Service is executed, the Transmission Provider shall release the escrow fund following receipt of the Transmission Customer's payment for the first month of service, or the deposit, without interest, will be fully credited against the Transmission Customer's monthly transmission service bill(s) upon commencement of service.
- 17.4 **Notice of Deficient Application:** If an Application fails to meet the requirements of the Tariff, the Transmission Provider shall notify the entity requesting service within fifteen (15) days of receipt of the reasons for such failure. The Transmission Provider will attempt to remedy minor deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application and release the escrow fund or return the deposit, without interest. Upon receipt of a new or revised Application that fully complies with the requirements of Part II of the Tariff, the Eligible Customer

shall be assigned a new priority consistent with the date of the new or revised Application.

- 17.5 Response to a Completed Application: Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transfer capability as required in Section 15.2. The Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (i) if it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to Section 19.1. Responses by the Transmission Provider must be made as soon as practicable to all completed applications (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.
- 17.6 Execution of a Service Agreement: Whenever the Transmission Provider determines that a System Impact Study is not required and that the service can be provided, it shall notify the Eligible Customer as soon as practicable but no later than thirty (30) days after receipt of the Completed Application. Where a System Impact Study is required, the provisions of Section 19 will govern the execution of a Service Agreement. Failure of an Eligible Customer to execute and return the Service Agreement or request service without an executed Service Agreement pursuant to Section 15.3, within fifteen (15) days after it is tendered by the Transmission Provider will be deemed a withdrawal and termination of the Application and pursuant to section 17.3, and release the escrow fund or return the deposit, without interest. Nothing herein limits the right of an Eligible Customer to file another Application after such withdrawal and termination.
- 17.7 Extensions for Commencement of Service: The Transmission Customer can obtain, subject to availability, up to five (5) one-year extensions for the commencement of service. The Transmission Customer may postpone service by paying a non-refundable annual reservation fee equal to one-month's charge for Firm Transmission Service for each year or fraction thereof within 15 days of notifying the Transmission Provider it intends to extend the commencement of service. If during any extension for the commencement of service an Eligible Customer submits a Completed Application for Firm Transmission Service, and such request can be satisfied only by releasing all or part of the Transmission Customer's Reserved Capacity, the original Reserved Capacity will be released unless the following condition is satisfied. Within thirty (30) days, the original Transmission Customer agrees to pay the Firm Point-To-Point transmission rate for its Reserved Capacity concurrent with the new Service Commencement Date. In the event the Transmission Customer elects to release the Reserved Capacity, the reservation fees or portions thereof previously paid will be forfeited.

STATEMENT OF
TIMOTHY J. MEEKS
ADMINISTRATOR
WESTERN AREA POWER ADMINISTRATION
U.S. DEPARTMENT OF ENERGY

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

MARCH 4, 2010

a cooperating agency in the preparation of an Environmental Assessment addressing a proposal for emergency, industry-wide power line right-of-way clearing in severely beetle-impacted Colorado forests.

Transmission - open access creates challenges, opportunities

We conduct transmission business in the spirit of our long-standing policy of non-discriminatory open access to our system. In 1998, Western voluntarily filed an open access transmission tariff with the FERC. Our tariff is a living document, demonstrating our commitment to abide by the same rules as the rest of industry, except where we must deviate to avoid conflicts with Federal mandates and our statutory obligations. We most recently modified our tariff on December 1, 2009. The new revised tariff was developed to comply with FERC Order No. 890 and to be consistent with Western's statutory and regulatory requirements. It addresses changes in transmission services and planning.

Recent initiatives for renewable energy, grant money, tax incentives and mandatory renewable energy portfolio standards have created an influx of generator interconnection requests to Western's transmission system. From January 1 through December 31, 2009, Western received 40 new requests for generation interconnection. Western has more than 350 MWs of installed wind resources serving load within its Balancing Authorities. Western has about 24,000 MWs of proposed wind resources in its collective interconnection queues, comprising a total of 111 requests (an average request of over 215 MW/farm).

Western's transmission system was constructed to deliver Federal hydroelectric power to support water project-related irrigation pumping requirements, wholesale preference power customers, and certain Federal end-use loads. Since the 1990s, Western's transmission system

has also served new merchant power plants. The remaining Western transmission capability is sold as long- and short-term under Western's Open Access Tariff when available. Our transmission system is at its all-time maximum use in many areas. As a Federal wholesale utility, Western has no end-use load obligation to expand its transmission. However, since our transmission is an integral part of the integrated transmission network, it is subject to transmission congestion and other reliability related problems.

Demand for transmission capacity has been on the rise over the past several years due to several key factors:

- increase in renewable generation such as wind power, which is typically located in remote areas not near load centers
- economic analyses pointing to key transmission constraint areas where reinforcements would allow lower-cost resources to flow toward higher-cost load areas
- stringent environmental requirements
- lack of suitable/acceptable resource development areas
- load growth (up until 2009)

These have all led to additional stress on the transmission system and hence on reliability.

Transmission upgrades are needed to comply with mandatory NERC Reliability Standards and also to meet the increasing demands for transfer capability on Western's transmission system.

We continue to develop partnership agreements with customers to jointly fund transmission upgrades.

Power marketing – rates and renewable energy

The 10th consecutive year of drought for some projects continues to impact Western, with Western-wide net generation expected to be 81 percent of average. In FY 2009, Western spent less for purchase power than originally anticipated due to better market pricing. Western continues to seek new ways to address the drought impacts on firm power rates.