

March 18, 2019

## **Non-profit Corporation White Paper for the Western Interconnect Unscheduled Flow Mitigation Program**

This paper is intended to set forth the concept of a non-profit Limited Liability Corporation (LLC) that would be an official legal entity that would hold the contractual services agreement with the Administrator and could hold contracts with other entities as needed to support the Administration of the program per the FERC filed tariff. The concept of a LLC would bring name consistency to the program, allow for portability of the Administrative function, provide liability protection, provide a construct for a legal entity that could hold contracts and agreements, and establish another level of accountability and transparency for the program.

**Background:** The Western Interconnect Unscheduled Flow Mitigation Program (WIUFMP) purpose is to mitigate unscheduled and unplanned flows on transmission paths that have been qualified under the WIUFMP to reliable levels during real-time operations. For 23 years the Western Electricity Coordination Council (WECC) administered the WIUFMP from its inception. However, with the changing industry roles WECC determined that the WIUFMP administrator function no longer fit within the mission and goals of WECC; therefore, WECC provided notice that they would cease the administration function for the WIUFMP in 2018. PacifiCorp has traditionally filed the WIUFMP as a tariff rate sheet to the PacifiCorp OATT, over the years the WIUFMP has been filed a total of three times with FERC and FERC has accepted all three filings. Due to the decision of WECC to cease administration, a committee of the Qualified Controllable Device owners and Transmission Operators of Qualified Paths (QOO), in accordance with the filed tariff, met in late 2017 to develop a selection process to find a new administrator for the WIUFMP. A request for proposal was developed and the QOO's reviewed the proposal responses and selected the Southwest Power Pool (SPP) to administer the WIUFMP.

The change in the administration of the WIUFMP caused the need to perform a lot of extra work for the new administrator. Despite numerous communications, the WIUFMP participants were not understanding why SPP was requesting WIUFMP data from the participants and subsequent invoicing them. The change in administrator caused a lot of extra effort to reach understanding. Several entities required business relationship paperwork to be established with SPP so that payments under the program could be made to SPP. SPP in its requirements to cover its administration costs collected its QOO approved costs for SPP services already rendered and for services to be performed for the next year. In general there has been a lot of work in getting Western entities to recognize SPP as the Administer of the WIUFMP. In reality it should not matter who is administering the WIUFMP but this was and is a mammoth of a problem that SPP continues to manage.

This white paper proposes establishing a non-profit corporation to manage and own the WIUFMP. The non-profit corporation would be organized to provide services in the western interconnection to further the cause of operating a highly connected transmission system together. The current arrangement with SPP as the Administer of the WIUFMP required SPP to hold any contracts or agreements on behalf of the WIUFMP, since the WIUFMP is not an entity. With this non-profit formation the WIUFMP could hold as needed contracts with entities, such as OATI to support the requirements of the program and eliminating the issue of the administrator holding the contract "on behalf of". The non-profit corporation would initially be focused on administering the WIUFMP and would be governed by the

QOOs. The non-profit corporation would provide the foundation for the administrative function and would provide the flexibility needed to move the administration to another administrator if needed with the “services agreement” between only two entities, the non-profit corporation and its administrator. Today the “services agreement” is between SPP and six entities; multiple entity agreements are always challenging. The non-profit corporation would be the recipient and disperser of all funds for the WIUFMP, providing clear transparency, backed by bank statements that are independent of the administrator. A non-profit corporation such as “Western Interconnect Unscheduled Flow Program, Inc.” will bring name and billing consistency to the WIUFMP regardless of who is providing administrative services for the WIUFMP. The QOO, the governing body for the non-profit corporation, would oversee the bank and the funds collected and would control the “actual” administration costs in accordance with the WIUFMP. The non-profit corporation would provide legal and risk protection to the Qualified Controllable Device owners and Transmission Operators of Qualified Paths. The current “services agreement” with SPP creates liability for the Qualified Controllable Device owners and Transmission Operators of Qualified Paths as a signatory to the services agreement.

#### **Summary of Benefits:**

- Portability – Today the SPP Administers the WIUFMP, the QOO’s selected SPP from several entities early in 2018. SPP committed to a two year administration services agreement that has provisions to renew on one year increments, the initial term expires on 12/31/2020. None of us know how the future looks for who will be administering the WIUFMP in fact we were surprised when WECC announced their intentions to cease being the administrator. If there should come a time when SPP decides to cease being the administrator or if the QOO’s decide to change the administrator it would be much easier to simply move the administration of the WIUFMP if there was a LLC, then the new administrator simply begins administrating the WIUFMP legal entity, no change of name is needed, the invoices are still sent out under the familiar LLC name all correspondence is sent under the LLC name, it totally simplifies the movement of the Administration function to another entity if and when that occurs.
- Liability Protections – with the formation of a LLC it will become a separate legal entity apart from its directors, this means that the business can own assets, enter into agreements and contracts and is liable for its own debts separate from each of the QOO companies. Today if there arises the need to enter into an agreement for services in connection with the Administration of the WIUFMP, such as OATI we do not have the ability aside from having our Administrator entering into the agreement, then if there is an Administrator change we will have to deal with that agreement that is held by the Administrator, these types of issues would make it difficult to change Administrators and would be a barrier to such change. With a LLC these issues could be addressed without imposing any liability on the QOO companies.
- Ability to hold contracts / agreements – As alluded to above the LLC could hold agreements since it would be a legal entity, including the services agreement that is currently being held between SPP and the six QOO companies.
- Establish another level of accountability and transparency – With the formation of a LLC all funds associated with the non-profit corporation would entirely managed by a single bank account in the name of the LLC, the LLC bank account be the recipient and disperser of all funds for the WIUFMP, providing clear transparency, backed by bank statements that are independent of the administrator’s accounting functions.

In summary, there is an advantage in the ability to efficiently select a new administrator for the WIUFMP, reduce confusion amongst the Western entities, and reduce the liability for the QOO companies.

The formation of the non-profit corporation will be accomplished by the filing of Articles of Incorporation. Bylaws governing the new entity will be developed and a filing to the Internal Revenue Service will be made to gain non-profit status under the IRS Code. The initial directors of the corporation will be composed of one member from each QOO company (CAISO, PAC, Northwestern, NV Energy and Tri-State). Western Area Power Administration, being a governmental agency cannot direct this entity, instead they will participate as they currently participate in other non-profit efforts today. Western Area Power Administration as a participant can participate in all activities of the non-profit entity, but will not have a voting stake in corporate decisions regarding the entity itself.

Upon agreement, a draft of the Articles of Incorporation for the corporation as well as the By-laws would be provided to the QOO for consideration. The formation of any corporation requires some basic fundamental items: 1) Incorporation with the Secretary of State's office of a state. The proposal is for the corporation to be incorporated in Colorado. 2) Development and filing of the Articles of Incorporation with the state. 3) Development and approval of the corporate by-laws. 4) Submission for tax status under the IRS. 5) Establishment of a bank account for the corporation. The proposal is to use a bank with national presence for portability purposes.

#### **Questions and Answers:**

- How would the LLC/Corporation be managed?
  - The LLC and its bank account would be managed by Administrator. The administrator would be signatory to the bank and would reconcile all funds for the program. The LLC, however would be controlled by its board of directors which will be one in the same as the QOO's.
- Would it ("the LLC") have separate employees, or would employees of one or more QOO's provide this work?
  - No, there would not be employees of the LLC, the Administrator would manage the LLC, which is really not any different from what the Administrator is doing today, and the primary difference is that the functions of receipts and payments from the WIUFMP would be via the LLC bank account and under the LLC name. The separate banking function will segregate the funds from the administrator adding a level of transparency.
- At what cost would the LLC bring to the program?
  - The costs to form a LLC are not substantial, a small Secretary of State fee to initially register (<\$100) and an annual fee to keep current (\$<20). There would also be a small Directors and Officers (D&O) insurance policy for the LLC that is estimated to be <\$700, a similar LLC that I'm familiar with has D&O cost of \$550. All other fees may include a small amount for banking (most banking accounts are free).
- Would the estimate costs associated with separate WIUFMP administration be more or less than the \$200,000/year administrative fee currently charged by SPP?
  - The costs would be slightly more, as indicated above by <\$1000 total, the extra costs are for registrations fees, and insurance for the legal entity.

- How would the governance of the LLC/Corporation relate to the QOO itself and the Unscheduled Flow Committee?
  - The Unscheduled Flow Committee (UFC) would not have any governance over the LLC, the QOO's would effectively be the directors of the LLC. The specific structure would indicate that the directors for the corporation shall be the QOO's. The UFC is an open committee with open membership under the QOO structure.
- How would this work with WAPA unable to be a voting member of the LLC?
  - Western Area Power Administration, being a governmental agency cannot be a voting member of this entity. WAPA has been in this situation before, WAPA still has a vested interest in the program. In other situations where WAPA has been in this situation WAPA has been able to be a participating entity who does not have voting rights, as they participate in other non-profit entities today. Instead of WAPA being a director they will be a participating entity allowing WAPA to participate as they currently participate in other non-profit efforts today. Western Area Power Administration as a participant can participate in all activities of the non-profit entity, but will not have a voting stake in corporate decisions regarding the entity itself.
- Would this new legal entity be subject to FERC jurisdiction, and, if so, would the responsibilities attendant to that jurisdiction be acceptable to Tri-State and WAPA?
  - This legal entity would not be subject to FERC jurisdiction, this entity is simply administering the WIUFMP and nothing more.

In order for this proposal to be put into effect it would require a simple majority vote of the QOO's, per the QOO Charter.