



Confidential Data

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**Regional State
Committee Meeting**

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Santa Fe, NM



OMS FERC Decision on Confidential Data

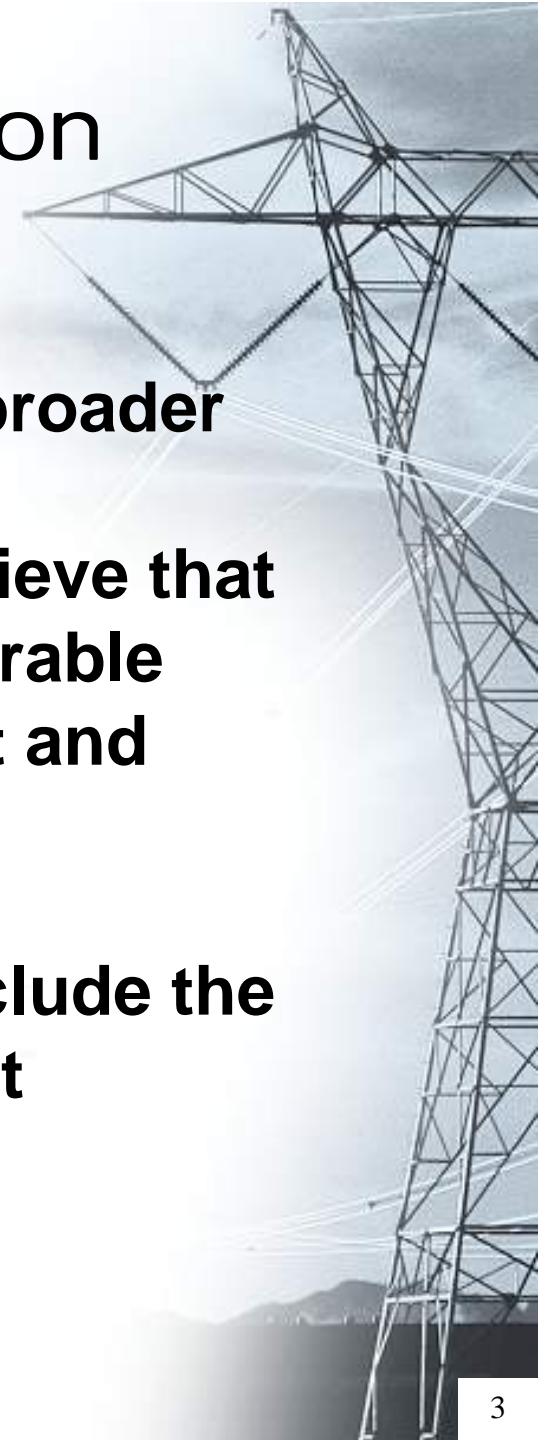
- ❖ **As filed on March 31, 2004, the MISO Market Tariff included a provision regarding confidential data that allowed the state commissions and the OMS to gain access to confidential data in a manner equivalent to FERC's access. (Section 38.9.4 and 54.3 of the MISO Tariff).**
- ❖ **FERC rejected both sections in its Order on August 6, 2004.**
- ❖ **On June 21, 2005, FERC denied request for rehearing and offer of proof and directed that Midwest ISO file revised TEMT tariff sheets and revise the draft non-disclosure agreement so that it will conform to the revised tariff sheets.**
- ❖ **Midwest ISO submitted proposed revisions on August 19, 2005.**





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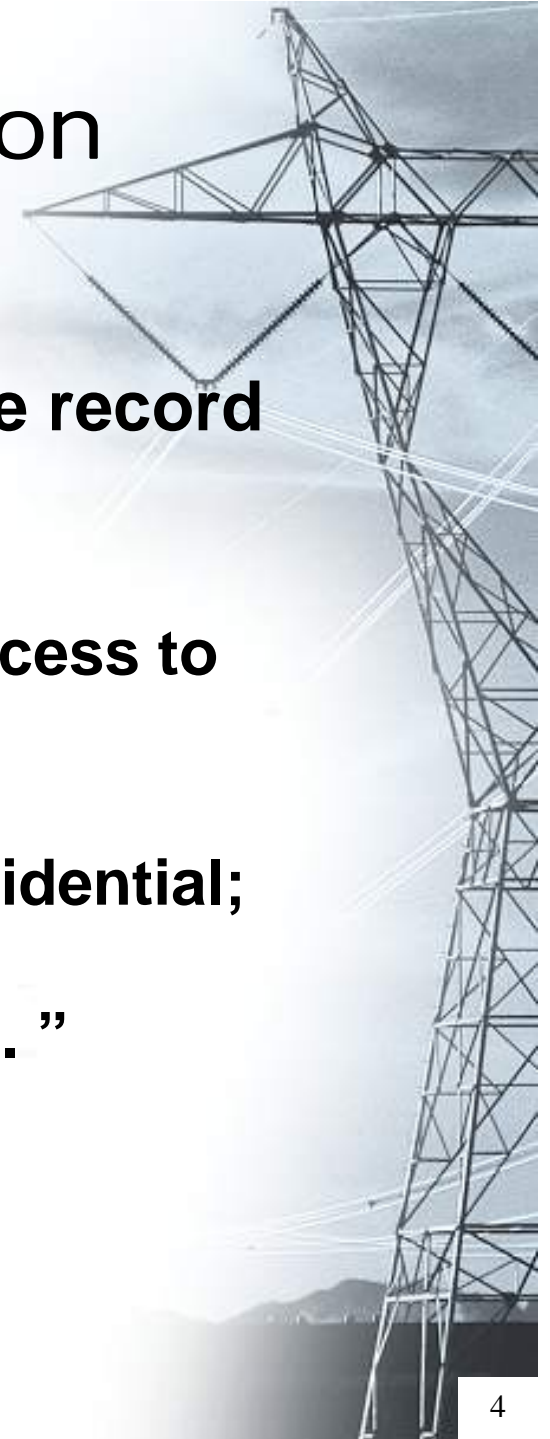
- ❖ **“The Midwest ISO’s proposal is broader than the recently-accepted PJM confidentiality policy, and we believe that the two ISOs should have comparable rules as they move toward a joint and common market.”**
- ❖ **“The revised proposal should include the type of non-disclosure agreement recently approved for PJM.”**





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- ❖ **“The question here is whether the record demonstrates:**
 - 1. that OMS and the states need access to data that is comparable to the Commission’s access;**
 - 2. that they will keep that data confidential; and**
 - 3. a legitimate purpose for the data. ”**





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- ❖ **“If the states have wholesale market data, they may have an array of uses for it that may have potential benefits for the public. However, OMS cites no instances in which it (or any of its member states) has actually used wholesale market data in order to bring about the potential benefits that it identifies.**

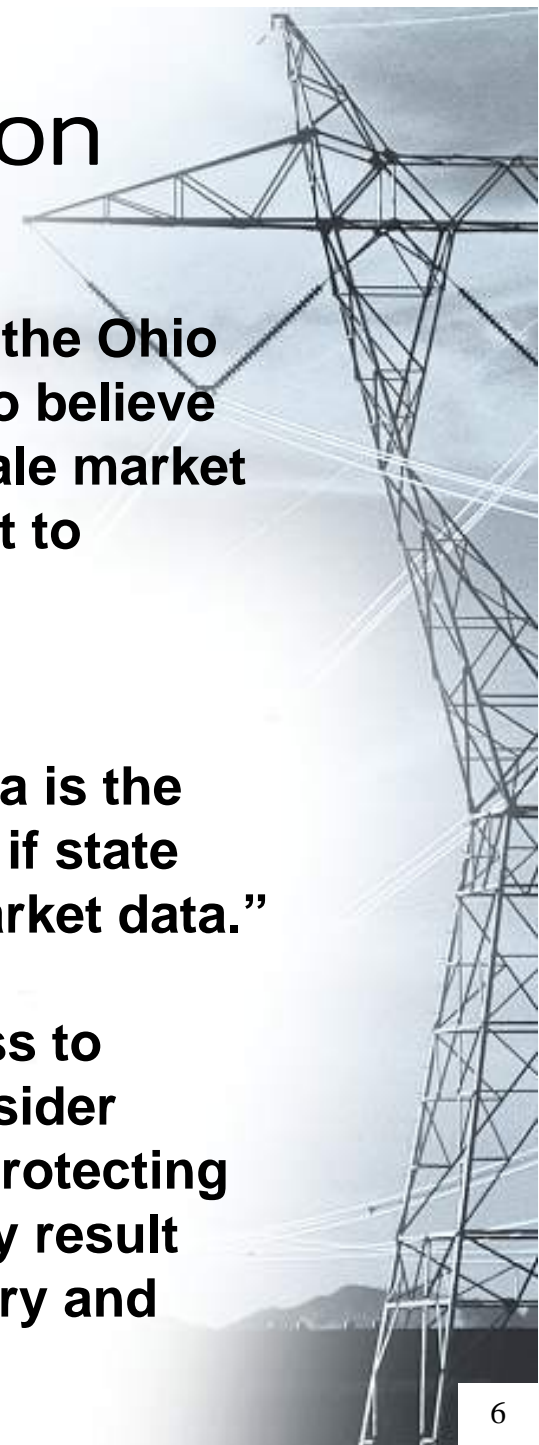
- ❖ **... it is not clear that state commissions need unlimited access to wholesale market data in order to bring about these benefits.”**





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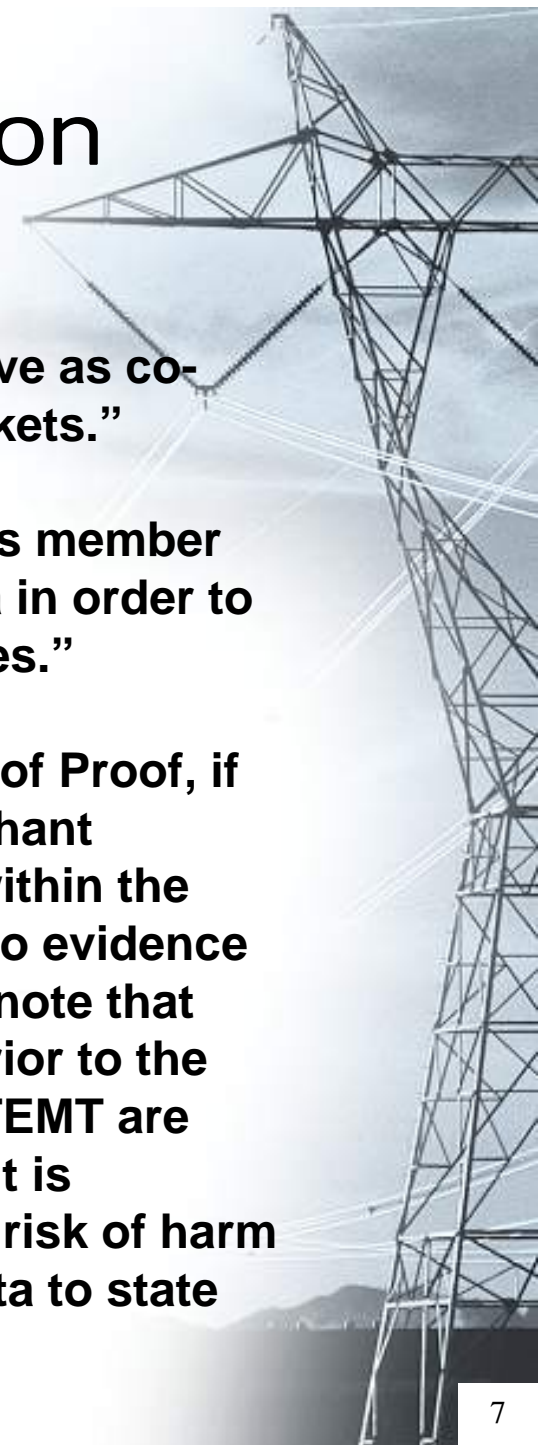
- ❖ **“OMS, and its individual members such as the Ohio Commission, have given us every reason to believe that they take the confidentiality of wholesale market data seriously, and would make every effort to maintain this confidentiality.”**
- ❖ **“We are not convinced, however, that the unauthorized disclosure of confidential data is the only source of potential damage to utilities if state commissions have access to wholesale market data.”**
- ❖ **“Our ruling is intended to give states access to confidential information on terms they consider necessary to fulfill their obligations while protecting market participants from any harm that may result from the release of this sensitive, proprietary and confidential information.”**





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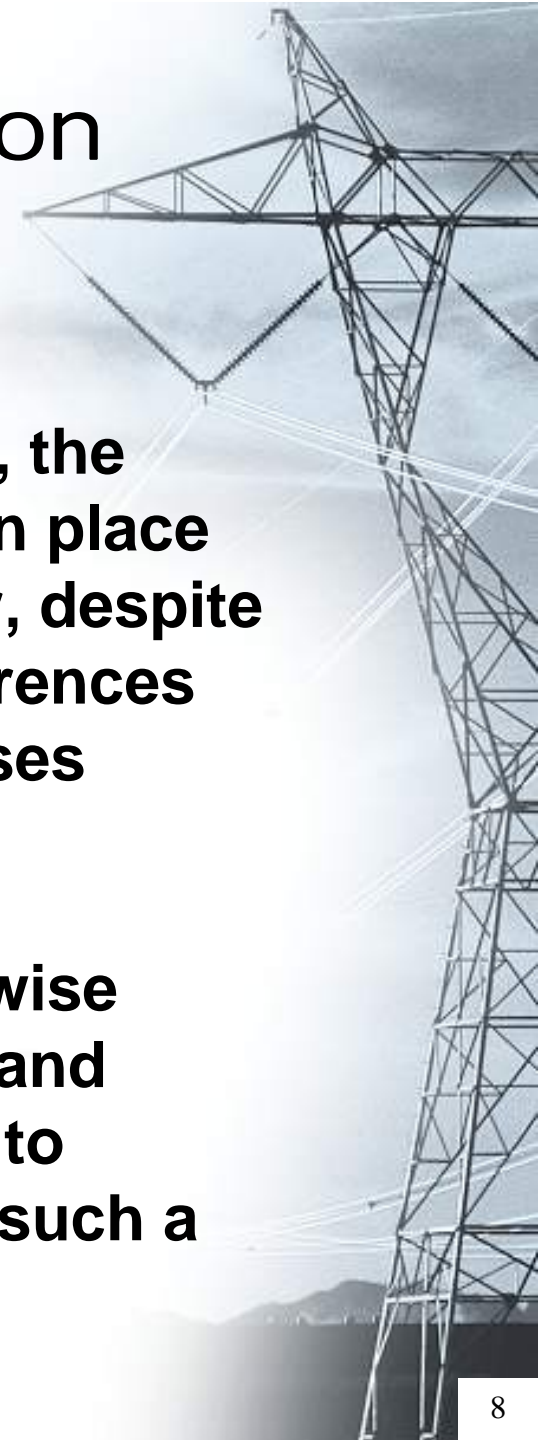
- ❖ **“We disagree... that state commissions can serve as co-regulators with regard to wholesale energy markets.”**
- ❖ **“OMS cites no instances in which it (or any of its member states) has actually used wholesale market data in order to bring about the potential benefits that it identifies.”**
- ❖ **“As OMS itself points out elsewhere in its Offer of Proof, if states are given overbroad access to data merchant generators may be discouraged from locating within the Midwest ISO regions. OMS notes that there is no evidence of this to date, and we agree; however, we also note that there can be no evidence of this type of harm prior to the time that data confidentiality provisions of the TEMT are finalized and made effective. We thus find that it is appropriate to take precautions to minimize the risk of harm that could result from making disclosures of data to state commissions. ”**





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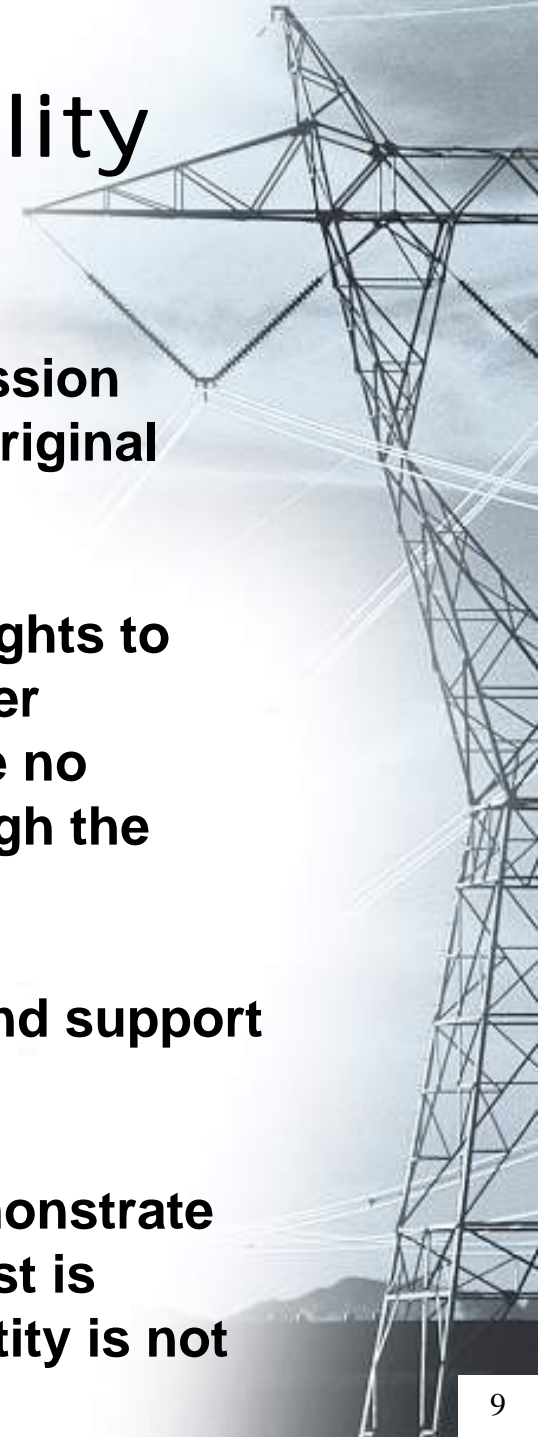
- ❖ **“The more closely related RTOs are, the more important it is that they have in place effective means of working together, despite market design and operational differences that may exist between them. In cases where such differences will hinder coordinated RTO operations, the Commission may find that an otherwise reasonable tariff proposal is unjust and unreasonable, and require changes to improve RTO compatibility. This is such a case.”**





SPP Draft Confidentiality Provisions

- ❖ **The SPP provision regarding State Commission access and RSC access is very similar to original MISO filing.**
- ❖ **Under FERC OMS Order, States retain all rights to access data allowed under the law, but other regulatory bodies (i.e. OMS, RSC) that have no statutory authority must gain access through the tariff provisions set out in the PJM OA.**
- ❖ **SPP and the SPP RSC must jointly agree and support the filed position on confidentiality**
- ❖ **If a public entity requests data, it must demonstrate how it can protect the data when the request is submitted (i.e. protective order), but the entity is not required to file a lawsuit to protect.**

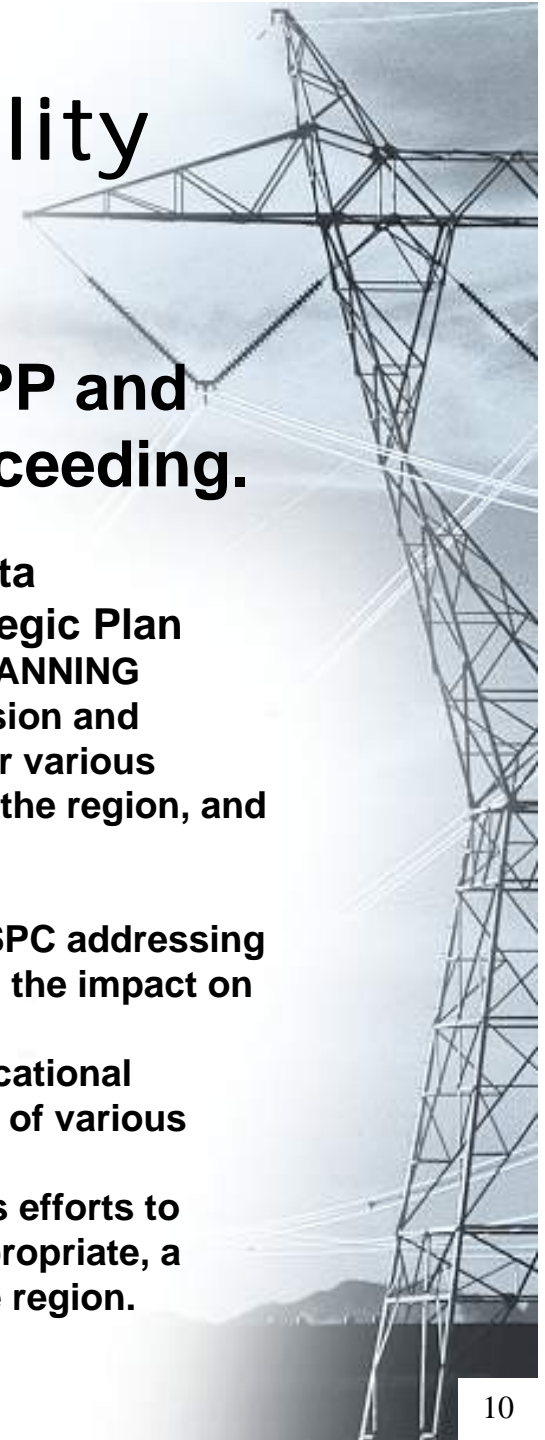




SPP Draft Confidentiality Provisions

❖ **Defining the differences between SPP and MISO/PJM will be critical to this proceeding.**

- ◆ **Examples of prior beneficial use of wholesale data**
- ◆ **Regional IRP potential identified in the SPP strategic Plan**
 - * **From the SPC Report: ENHANCED REGIONAL PLANNING**
 - * **SPP is in a unique position as a regional transmission and reliability organization. It can serve as a conduit for various issues and positions that impact localities, states, the region, and national matters...**
 - * **The following steps should be taken:**
 1. **SPP staff will develop a white paper for the SPC addressing the expansion of its portfolio of services and the impact on the organization to do so.**
 2. **SPP will host a technical conference for educational purposes, to coordinate/facilitate discussion of various issues of interest in the region.**
 3. **SPP staff and the SPC will support the RSC's efforts to evaluate the need for and develop, when appropriate, a practical integrated resource solution for the region.**

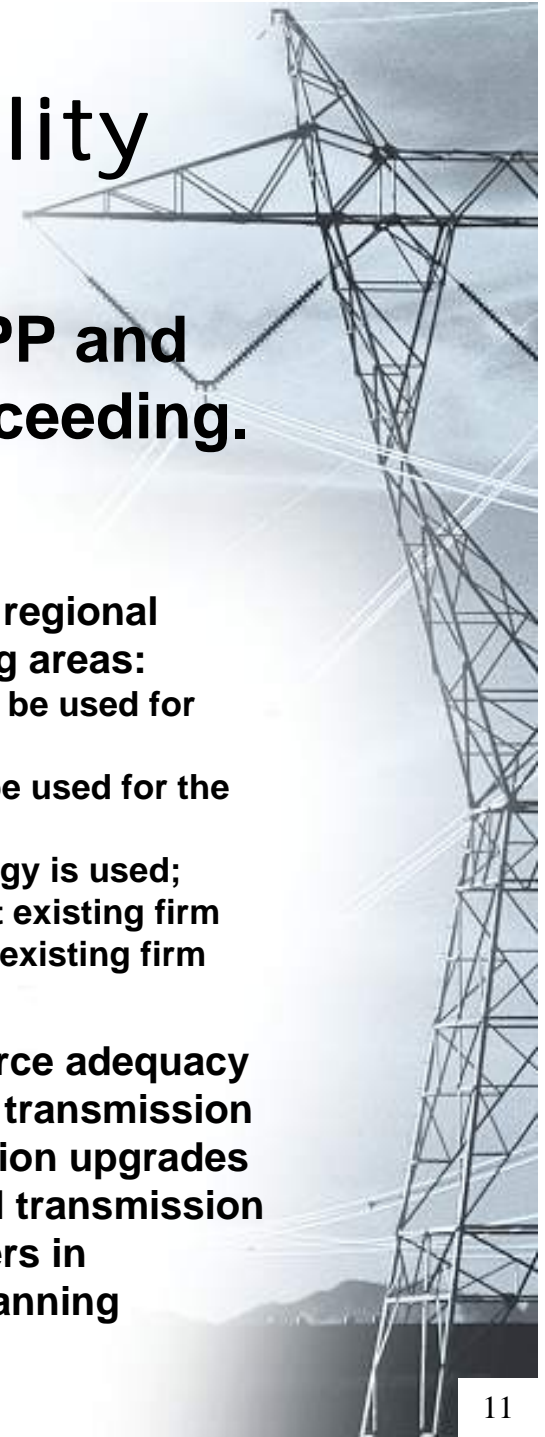




SPP Draft Confidentiality Provisions

❖ **Defining the differences between SPP and MISO/PJM will be critical to this proceeding.**

- ◆ **The recently approved cost allocation methodology**
- ◆ **The RSC has primary responsibility for determining regional proposals and the transition process in the following areas:**
 - * **(a) whether and to what extent participant funding will be used for transmission enhancements;**
 - * **(b) whether license plate or postage stamp rates will be used for the regional access charge;**
 - * **(c) FTR allocation, where a locational price methodology is used;**
 - * **(d) the transition mechanism to be used to assure that existing firm customers receive FTRs equivalent to the customers' existing firm rights.**
- ◆ **The RSC will also determine the approach for resource adequacy across the entire region. In addition, with respect to transmission planning, the RSC will determine whether transmission upgrades for remote resources will be included in the regional transmission planning process and the role of transmission owners in proposing transmission upgrades in the regional planning process.**





Current Status of Draft Confidentiality Provisions

- ❖ **SPC draft language was included in the September 28, 2005 RTWG background material.**
- ❖ **The RTWG accepted the proposed tariff language.**
- ❖ **This language will be a part of the EIS filing package to be considered in the near future by the MOPC as a part of the next EIS filing package.**

