**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of Demand Side Management Program for its Residential and Commercial Customers.  In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods. | )  )  )  )  )  )  ) | Case No. 16-1309-GA-UNC  Case No. 16-1310-GA-AAM |

**REPLY IN SUPPORT OF OCC’S MOTION TO STRIKE NON-EVIDENCE IN THE BRIEFS OF OHIO PARTNERS FOR AFFORDABLE ENERGY**

**AND COLUMBIA GAS OF OHIO**

**BY**

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**BY**

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

In this case where Columbia Gas and OPAE ask that Ohio consumers subsidize $200 million in energy efficiency programs, they should be denied their attempt to circumvent the public hearing process with the use of non-evidence to shore-up their positions that were discredited at hearing. The Public Utilities Commission of Ohio (“PUCO”) provided all parties to this proceeding a full and fair opportunity to present testimony, cross-examine witnesses, and develop a complete factual record. Now, in their briefs, Ohio Partners for Affordable Energy (“OPAE”) and Columbia Gas of Ohio (“Columbia”) seek to use new, non-record information, long after evidence was due and with no opportunity for opposing parties to question, respond to, or challenge such information. These tactics are unfair to the residential consumers that the Office of the Ohio Consumers’ Counsel (“OCC”) represents and violate PUCO precedent and the Ohio Rules of Evidence for fair hearings.

In its motion to strike, OCC identified three categories of information in OPAE’s and Columbia’s briefs that are not in evidence: (1) citations to a settlement in Columbia’s 2008 rate case, (2) reliance on information from Columbia's 2011 energy efficiency application, and (3) reliance on data that Columbia alleges came from tariff sheets. If any of this information were relevant, then OPAE and Columbia should have sought to introduce it during the hearing. This is standard practice before the PUCO. Had OPAE and Columbia done so, OCC and other parties would have had a fair opportunity to object and cross-examine the appropriate witnesses and challenge the information. It is prejudicial to OCC and other parties for OPAE and Columbia to rely on outside-the-record information.

As the PUCO has consistently held, “new information should not be introduced after the closure of the record.”[[1]](#footnote-2) OPAE and Columbia seek to do just that. The PUCO should grant the OCC’s motion to strike[[2]](#footnote-3) the information relied upon by OPAE and Columbia that is outside the record in this proceeding.

# I. ARGUMENT

## A. In its briefs OPAE—which offered no testimony at hearing in support of millions of dollars in subsidies for weatherization—makes repeated references to a 2008 settlement in another case and that should be struck.

As explained in OCC’s motion to strike, OPAE cites a settlement filed in its last rate case (Case No. 08-72-GA-AIR) multiple times in its initial and reply briefs in this proceeding.[[3]](#footnote-4) This settlement was not admitted into evidence in the current energy efficiency case. Neither OPAE nor any other party asked for this settlement to be admitted into the evidentiary record either. And OPAE did not offer any testimony in this case, despite signing a settlement for consumers to subsidize weatherization programs that cost $86 million and energy efficiency programs that cost $200 million in total. OPAE, however, relied heavily on the non-record settlement to make the alleged point that there is some process other than this PUCO proceeding for continuing, modifying, or expanding Columbia's energy efficiency programs.[[4]](#footnote-5)

In response to OCC’s motion to strike, OPAE does not deny that the rate case settlement was not admitted into the record in this case. Rather, OPAE argues that its reliance on outside-the-record information is proper because the PUCO approved that settlement.[[5]](#footnote-6) According to OPAE, the settlement can be cited to and used in any manner OPAE deems appropriate, “without limitation,” including as precedent and to enforce its terms.[[6]](#footnote-7) This is a wildly mistaken view of evidence and fairness in legal processes, including the PUCO’s process.

OPAE also claims that the PUCO’s Opinion and Order in Columbia’s rate case approved and quoted portions of the settlement.[[7]](#footnote-8) But OPAE repeatedly quoted the settlement, not the Opinion and Order.[[8]](#footnote-9) Regardless of whether the Opinion and Order in the rate case adopted the settlement, the settlement that OPAE cites was not admitted into the record in thisproceeding. The PUCO has previously granted motions to strike portions of briefs that include outside-the-record information, stating that documents filed in another PUCO proceeding are not part of the evidentiary record and should be struck.[[9]](#footnote-10) The mere fact that the settlement was approved by the PUCO in a previous case does not mean that parties are permitted to circumvent precedent and the process established by the PUCO. Nor does it mean that OPAE can cite, quote, and rely on the settlement without first seeking its admission into evidence in the present proceeding, such as through testimony that OPAE chose not to present.

OPAE included lengthy block quotes from the rate case settlement in its initial brief and reply brief.[[10]](#footnote-11) In its memorandum contra OCC's motion to strike, OPAE represents to the PUCO that these block quotes are also contained in the order approving that settlement. This is a false representation. Some portions of the settlement are quoted and paraphrased in the order. But the entirety of the quotes that OPAE pulled from the settlement and included in its briefs in this case are not included in the Opinion and Order. The PUCO should reject OPAE’s use of non-record information.

Additionally, OPAE’s claim that it may cite to the earlier settlement to enforce its terms and conditions in this case is without merit.[[11]](#footnote-12) OPAE cannot enforce the terms of a settlement in another case through its briefs after the close of the hearing and after the settlement and language at issue was not raised at hearing or made part of the record. OPAE had numerous opportunities to raise issues related to this settlement in the present case. OPAE could have filed intervenor testimony on this topic. Instead, OPAE filed no testimony at all. OPAE could have raised this issue at any of the four days of hearings. OPAE never mentioned this settlement during the hearing.

OPAE’s assertion that it has an unfettered right to cite to the settlement in any proceeding “without limitation” has no basis in law or previous PUCO decisions.[[12]](#footnote-13) It is prejudicial to OCC and the consumers it represents. It threatens the fairness of the PUCO’s process, which is already threatened by a settlement that would have Ohioans subsidizing $200 million of energy efficiency without any broad-based representative of consumers signing the settlement. The PUCO should grant OCC’s motion to strike portions of OPAE’s briefs as set forth in OCC's motion to strike.[[13]](#footnote-14)

## B. The PUCO should not take administrative notice of the documents and information in Columbia's reply brief.

### The request for administrative notice is untimely and unfair at this point in the hearing process.

A substantial portion of Columbia’s reply brief relies on the PUCO’s authority to take administrative notice of public documents and information.[[14]](#footnote-15) Columbia argues that the PUCO has the authority to take administrative notice of (i) the August 5, 2016 procedural motion for extension filed in this case, (ii) Columbia’s tariffs, and (iii) Columbia’s 2011 DSM application.[[15]](#footnote-16) The Attorney Examiner in this case could have exercised her discretion to take administrative notice of these documents and information (to the extent any of them are relevant, which is something OCC does not concede). And if the Attorney Examiner had done so at or before the hearing, then parties, including OCC, would have had an opportunity to question Columbia’s witnesses on these documents and information. But neither Columbia nor any other party ever asked the Attorney Examiner to take administrative notice of these documents. What the Attorney Examiner hypothetically could have done, and what actually took place, are two different things.

Administrative notice of public documents is not granted as a matter of right. As the PUCO has recognized, “the Supreme Court of Ohio has held that there is neither an absolute right for nor a prohibition against the Commission’s taking notice of facts outside the record in a case.”[[16]](#footnote-17) The Attorney Examiner has the discretion, on a case-by-case basis, to evaluate a party's request for administrative notice and to grant or deny that request based on the facts of that case.[[17]](#footnote-18) Columbia cited documents and information in its brief without ever asking for administrative notice. Columbia appears to assume that every document that has ever been filed in any PUCO proceeding is automatically deemed administratively noticed and is fair game for briefs. This is simply not how administrative notice is applied.

The PUCO has consistently denied parties’ attempts to introduce new evidence after the hearing through administrative notice. In a 2007 case, OCC sought to do what Columbia is trying to do here. OCC cited in its reply brief information from another PUCO proceeding.[[18]](#footnote-19) OCC argued that the PUCO could take administrative notice of that information.[[19]](#footnote-20) The PUCO rejected OCC’s argument and struck those portions of its reply brief.[[20]](#footnote-21) According to the PUCO, it was inappropriate to take administrative notice “so late in [the] proceeding.”[[21]](#footnote-22) In a recent electric security plan case, IEU-Ohio filed a motion to take administrative notice of certain documents after the hearing was over.[[22]](#footnote-23) The utility objected and the PUCO denied IEU-Ohio’s request for administrative notice. The PUCO reasoned that the information in question was not presented at the hearing, it had not been admitted into the record, no witness sponsored the exhibit, and no party had an opportunity to cross-examine a witness on the document.[[23]](#footnote-24) In another case involving FirstEnergy, the PUCO found that administrative notice is proper only if the other parties “have had an opportunity to prepare and respond to the evidence” and are “not prejudiced by its introduction.”[[24]](#footnote-25) And in AEP Ohio’s 2011 electric security plan case, OCC moved to strike AEP’s citations to its tariffs in its brief.[[25]](#footnote-26) The PUCO granted OCC’s motion to strike because “it would be improper to take administrative notice of the information at this stage in the proceeding.”[[26]](#footnote-27)

If a party asks for administrative notice at or before the hearing, then other parties have an opportunity to (i) oppose the request, (ii) cross-examine witnesses regarding any information that is administratively noticed, and (iii) submit their own evidence on the issues raised by the documents in question. Columbia’s tactic, in contrast, is to assume that every document that has ever been filed with the PUCO is automatically evidence and can be cited freely in any brief, even if no party sought to have the document admitted, no party asked for administrative notice, and no party had an opportunity to address the document at the hearing. This defies logic.

In this case, Columbia did not request administrative notice of (i) the August 5, 2016 procedural motion for an extension, (ii) its 2011 DSM application, or (iii) any of its tariffs. Columbia simply cited them in its brief as though they were evidence. And now, in response to OCC's motion to strike, Columbia suggests that it was free to do so because the PUCO could have taken administrative notice of these documents. The proper time for that has come and gone. Columbia declined to ask for administrative notice at the proper time and, despite the opportunities, submitted no evidence with this information in its testimony.

In fact, Columbia still has not affirmatively asked the PUCO to take administrative notice of any of these documents or information. It did not ask for administrative notice in its reply brief. And it did not ask for administrative notice in its memorandum contra OCC’s motion to strike. Columbia argues solely that the PUCO has the authority to take administrative notice.

The PUCO should not absolve Columbia of its failure to comply with basic rules regarding the appropriate time for administrative notice and for timely submitting evidence. The PUCO should strike the information.

### OCC (and residential consumers) would be prejudiced if administrative notice were taken at this time.

Columbia claims that the admission of this information would not prejudice OCC. This claim is inaccurate. Columbia relies on the documents and information to make its case on reply brief. OCC has no opportunity to address Columbia’s arguments (which seems Columbia’s design) because Columbia did not seek to introduce these documents and information at or before the hearing. By using this information in its reply brief, Columbia has foreclosed any opportunity for OCC to question Columbia's witnesses regarding the procedural motion, the 2011 DSM application, or Columbia’s tariffs. This is prejudicial to OCC and to fair decision-making by the PUCO.

Moreover, it is contrary to established PUCO precedent, which has consistently held that administrative notice may be taken only where parties were on notice of the other party’s intent to seek administrative notice, had an opportunity to prepare and respond to the evidence contained in the administrative notice, and were not prejudiced by its introduction.[[27]](#footnote-28) In a recent natural gas case involving Duke Energy, OCC asked for administrative notice of documents cited in its initial brief.[[28]](#footnote-29) OCC argued that Duke was not prejudiced because it had an opportunity to address the new documents in its reply brief. The PUCO was unconvinced and denied OCC's request for administrative notice.[[29]](#footnote-30) Here, OCC had even less opportunity to respond (that is, none) because Columbia introduced new documents and information not in its initial brief but in its reply brief. The PUCO should follow its precedent from the Duke case and conclude that OCC (and consumers) would be prejudiced by a late request for administrative notice here.

## C. Columbia’s tariffs are not legal precedent in this case.

Columbia's assertion that the tariffs have the “force of law” in the current context is erroneous.[[30]](#footnote-31) Columbia may be correct that it can enforce the terms within a tariff. But Columbia is not seeking enforcement of its tariffs in this energy efficiency case. Rather, Columbia is relying on data that purportedly come from its tariffs to bolster its witness's faulty testimony on the cost-effectiveness of Columbia's proposed energy efficiency programs.[[31]](#footnote-32) Columbia’s tariffs do not have the “force of law” in this regard.

The PUCO does not freely permit utilities to cite information from utility tariffs as though they are evidence. In its memorandum contra OCC's Motion to Strike, Columbia notes that the PUCO has taken administrative notice of tariffs in the past.[[32]](#footnote-33) Columbia cites a string of cases in support of this claim. OCC agrees that the PUCO can take administrative notice of tariffs, at its discretion. But the utility must ask for that administrative notice at or before the hearing. The question is not whether the PUCO has the general authority to take notice of tariffs; that is undisputed. The question is whether Columbia can rely on tariffs in its reply brief without asking for administrative notice at or before the evidentiary hearing. The cases that Columbia cites simply recognize the general principle that tariffs can be administratively noticed. In none of those cases, however, did the PUCO take administrative notice of the tariff that was cited for the first time in a brief after the record was closed.[[33]](#footnote-34)

Indeed, as Columbia acknowledges, in AEP Ohio’s recent electric security plan case, the PUCO denied AEP’s request for administrative notice of utility tariffs.[[34]](#footnote-35) And this case, unlike the others cited by Columbia, is directly on point because AEP cited the tariffs in question in a brief.[[35]](#footnote-36) Like Columbia, AEP argued that it was permitted to cite the tariffs because they “have the effect of a statute.”[[36]](#footnote-37) The PUCO rejected this argument and granted OCC’s and other parties’ motion to strike AEP’s citation to utility tariffs.[[37]](#footnote-38) The PUCO concluded that it was inappropriate for AEP to cite tariff data in its briefs because OCC and other parties had no opportunity to “challenge the information in question.”[[38]](#footnote-39) Here, the PUCO should come to the same conclusion. Columbia cannot cite data from its tariffs because they are not in evidence.

## D. Columbia’s reliance on data from its tariffs should also be struck because Columbia violated the PUCO’s discovery rules by failing to disclose to OCC that it relied on that data.

In its reply brief, Columbia argues that data from its tariffs support Columbia’s calculations of the costs and benefits of its energy efficiency programs.[[39]](#footnote-40) The cost-effectiveness of Columbia’s programs was possibly the most heavily contested issues in this case. OCC sought information on Columbia’s cost-effectiveness calculations through discovery, during two depositions, and during hours of cross-examination at the hearing.

At no time did Columbia respond that it relied on data contained in its tariff sheets for the costs and benefits of its energy efficiency programs. At no time did Columbia supplement its discovery responses pursuant to Ohio Administrative Code 4901-16(D)(2)[[40]](#footnote-41) to state that it relied on its tariff sheets in deriving and supporting the natural gas projections that it used in its cost-benefit analysis. At no time during the depositions of Columbia’s witnesses did Columbia disclose that its assumptions and projections were based on data and information contained in its tariff sheets.

OCC made these arguments in its motion to strike.[[41]](#footnote-42) Columbia ignored them in its memorandum contra. Columbia has no excuse for its repeated failure to disclose its purported reliance on data from its tariff sheets. If Columbia in fact relied on data from its tariff sheets in projecting the future price of natural gas, it was required to tell OCC and the attorney examiner when asked. OCC asked for this information repeatedly before and during the evidentiary hearing.

In this regard, had Columbia sought to introduce this information at hearing, OCC could have availed itself of Ohio Adm. Code 4901-1-23(F)(3) to bar Columbia “from supporting or opposing designated claims or defenses, or from introducing evidence . . . .” because Columbia failed to appropriately respond to OCC’s related discovery on this issue.

For these reasons, the PUCO should reject Columbia's arguments and grant OCC’s motion to strike.

# II. CONCLUSION

OPAE and Columbia had full and fair opportunities to introduce evidence in this case *at the evidentiary hearing* for that purpose. They didn’t do so. The PUCO has rules and procedures in place to protect fairness for those who participate in its regulatory processes and to ensure that all parties have an equal opportunity to make their case for PUCO decision-making. OPAE and Columbia seek to circumvent those rules by relying on outside-the-record information and documents in their briefs.

The PUCO has consistently held that a party seeking administrative notice must do so at or before the hearing. Neither OPAE nor Columbia asked the Attorney Examiner to administratively notice any of the documents or information in question. Instead, they simply cited them in their briefs and now ask the PUCO to bless their unilateral decisions to introduce new and untested information and documents into this proceeding late. Columbia and OPAE’s tactics are unfair and contrary to PUCO precedent. They are outside the bounds of reasonable regulatory practice, especially in this case where those (Columbia and OPAE) using the non-record evidence are seeking hundreds of millions of dollars in subsidies from Ohioans.

To protect OCC and other parties from this unfair result, the PUCO should grant OCC’s motion to strike.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply In Support of OCC's Motion to Strike was served on the persons stated below via electronic transmission this 25th day of November 2016.

*/s/ Christopher Healey*

Christopher Healey

Assistant Consumers' Counsel

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1. *In re Application of the Ohio Edison Co., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co. for Authority to Provide for a Standard Serv. Offer Pursuant to R.C. 4928.143 in the Form of an Elec. Sec. Plan ,* Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing at 171 (Oct. 12, 2016). [↑](#footnote-ref-2)
2. Motion to Strike Portions of the Post-Hearing Briefs of Ohio Partners for Affordable Energy and Columbia Gas of Ohio by the Office of the Ohio Consumers' Counsel at 2-3 (Nov. 10, 2016) (the “Motion to Strike”). [↑](#footnote-ref-3)
3. Motion to Strike at 2-3(a) through (h). [↑](#footnote-ref-4)
4. Ohio Partners for Affordable Energy's Memorandum Contra at 2 (Nov. 18, 2016) (the “OPAE Memo Contra”). [↑](#footnote-ref-5)
5. Id. at 2. [↑](#footnote-ref-6)
6. Id. at 3. [↑](#footnote-ref-7)
7. Id. at 2. [↑](#footnote-ref-8)
8. Post-Hearing Brief on Behalf of Ohio Partners for Affordable Energy at 8-10, 37-40 (Oct. 20, 2016) (the “OPAE Initial Brief”); Reply Brief on Behalf of Ohio Partners for Affordable Energy at 4-5 (Nov. 4, 2016) (the “OPAE Reply Brief”). [↑](#footnote-ref-9)
9. *In re Application of the Ohio Edison Co., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co. for Authority to Provide for a Standard Serv. Offer Pursuant to R.C. 4928.143 in the Form of an Elec. Sec. Plan,* Case No. 14-1297-EL-SSO, Opinion and Order at 37 (Mar. 31, 2016). See also *In the Matter of the Application of Ohio American Water Co. to Increase its Rates for Water & Sewer Servs. Provided to its Entire Serv. Area,* Case No. 09-391-WS-AIR, Opinion and Order at 8-9 (May 5, 2010) (granting motion to strike non-record evidence, which included testimony filed in a previous rate case). [↑](#footnote-ref-10)
10. OPAE Initial Brief at 8-10, 37-40; OPAE Reply Brief at 4-5. [↑](#footnote-ref-11)
11. OPAE Memo Contra at 3. [↑](#footnote-ref-12)
12. OPAE Memo Contra at 3. Notably, OPAE cites to no rules, statutes or case law to support its assertions. [↑](#footnote-ref-13)
13. Motion to Strike at 2-3(a) through (h). [↑](#footnote-ref-14)
14. Reply Brief of Columbia Gas of Ohio, Inc. at 1-2, 5-10 (Nov. 4, 2016) (the “Columbia Reply Brief”). [↑](#footnote-ref-15)
15. Memorandum Contra of Columbia Gas of Ohio, Inc. to Motion to Strike of the Office of the Ohio Consumers' Counsel at 3 (Nov. 18, 2016) (the “Columbia Memo Contra”). [↑](#footnote-ref-16)
16. *In re Application of the Dayton Power & Light Co. for Approval of its Elec. Sec. Plan*, Opinion & Order at 6, Case No. 12-426-EL-SSO (Sept. 4, 2013). [↑](#footnote-ref-17)
17. *Id.* [↑](#footnote-ref-18)
18. *In re Application of Columbus S. Power Co. & Ohio Power Co. for Approval of an Additional Generation Serv. Rate Increase Pursuant to their Post-Market Dev. Period Rate Stabilization Plans*, Case No. 07-63-EL-UNC, Opinion & Order at 4-5 (Oct. 3, 2007). [↑](#footnote-ref-19)
19. *Id.* [↑](#footnote-ref-20)
20. *Id.* [↑](#footnote-ref-21)
21. *Id.* [↑](#footnote-ref-22)
22. *In re Application of the Dayton Power & Light Co. for Approval of its Elec. Sec. Plan*, Case No. 12-426-El-SSO, Opinion & Order at 7-8 (Sept. 4, 2013). [↑](#footnote-ref-23)
23. *Id.* [↑](#footnote-ref-24)
24. *In re Application of Ohio Edison Co., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co. for Authority to Provide a Standard Serv. Offer Pursuant to R.C. 4928.143 in the form of an Elec. Sec. Plan,* Fifth Entry on Rehearing at 172 (Oct. 12, 2016). [↑](#footnote-ref-25)
25. *In re Application of Columbus S. Power Co. for Approval of an Elec. Sec. Plan*, Case No. 08-917-EL-SSO, Opinion & Order at 9-10 (Oct. 3, 2011). [↑](#footnote-ref-26)
26. *Id.* [↑](#footnote-ref-27)
27. See e.g., *In the Matter Of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan,* Case No. 12-1230-EL-SSO, Entry at 5-6 (June 21, 2012); *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan,* Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing at 172 (October 12, 2016). [↑](#footnote-ref-28)
28. *In re Application of Duke Energy Ohio, Inc. for an Increase in its Natural Gas Distrib. Rates*, Case No. 12-1685-GA-AIR, Opinion & Order at 6-8 (Nov. 13, 2013). [↑](#footnote-ref-29)
29. *Id.* [↑](#footnote-ref-30)
30. Columbia Memo Contra at 4. [↑](#footnote-ref-31)
31. Columbia Reply Brief at 27-31. [↑](#footnote-ref-32)
32. Columbia Memo Contra at 5. [↑](#footnote-ref-33)
33. *See In re Complaint of Pro Se Commercial Props. v. the Cleveland Elec. Illuminating Co.*, Case No. 07-1306-EL-CSS, Entry on Rehearing, ¶ 9 (Nov. 5, 2008) (taking administrative notice of tariff where the party asked for administrative notice in addition to asking for the tariff to be admitted into evidence); *In re Keith A Darby v. the Cleveland Elec. Illuminating Co.*, Case No. 04-1041-EL-CSS, Entry, ¶ 9 (taking administrative notice of a tariff in a case that was dismissed without any testimony or hearing); *In re Complaint of Nat'l Elec. Contractors Assn., Ohio Conference v. Ohio Edison Co.*, Case No. 98-1400-EL-CSS, Opinion & Order at 14-15 (June 28, 2001) (discussing FirstEnergy's tariffs but not affirmatively taking administrative notice); *In re Complaint of Buckeye Linen Serv. v. Ohio Power Co.*, Case No. 93-782-EL-CSS, Opinion & Order, 1994 Ohio PUC LEXIS 282, at \*18 (Apr. 7, 1994) (attorney examiner took administrative notice of tariffs); *In re Complaint of Sam Mraovich v. Tomahawk Utils, Inc.*, Case No. 89-1680-WW-CSS, Opinion & Order, 1991 Ohio PUC LEXIS 31, at \*30 (Jan. 10, 1991) (taking administrative notice in a case where no briefs were filed). [↑](#footnote-ref-34)
34. *In re Application of Columbus S. Power Co. for Approval of an Elec. Sec. Plan*, Order on Remand at 9, Case No. 08-918-EL-SSO (Oct. 3, 2011). [↑](#footnote-ref-35)
35. *Id.* [↑](#footnote-ref-36)
36. *Id.*; Columbia Memo Contra at 3-4. [↑](#footnote-ref-37)
37. *Id.* [↑](#footnote-ref-38)
38. *Id.* [↑](#footnote-ref-39)
39. Columbia Reply Brief at 26-32. [↑](#footnote-ref-40)
40. Rule 4901-16(D)(2) states that “Discovery responses which are complete when made need not be supplemented with subsequently acquired information except in the following situations: The responding party later learned that the response was incorrect or otherwise materially deficient.” [↑](#footnote-ref-41)
41. Motion to Strike at 5-10. [↑](#footnote-ref-42)