

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.)))))	Case No. 08-917-EL-SSO
---	-----------------------	-------------------------------

In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.))))	Case No. 08-918-EL-SSO
--	------------------	-------------------------------

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
MEMORANDUM CONTRA MOTION TO STRIKE FILED BY OHIO
CONSUMERS' COUNSEL AND INDUSTRIAL ENERGY USERS-OHIO**

PUBLIC UTILITIES COMMISSION OF OHIO

2011 AUG 16 PM 4:25

RECEIVED-DOCKETING DIV

Columbus Southern Power Company and Ohio Power Company (collectively "AEP Ohio") file this memorandum contra to the motions to strike filed by Ohio Consumers' Counsel ("OCC") and the Industrial Energy Users-Ohio ("IEU") (collectively "Moving Parties") filed on August 10 and August 11, 2011 respectively. The Moving Parties confuse Commission rulings and tariffs with extra record evidence. The Commission should deny the motions and if it desires, take administrative notice of its promulgated decisions that are the source of the data in the tables that provide a comparison for Commission review.

The Moving Parties assert that AEP Ohio improperly included a comparison of its monthly POLR charge to other utilities' monthly charges for the POLR function. OCC asserts that this information is not submitted during the course of the proceeding and not

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

Technician TN Date Processed AUG 16 2011

made available for cross-examination. (OCC Motion at 1). IEU also asserts that this information is not part of the record of evidence in this case. (IEU Motion at 2).

The information used and described from the table on page 30 of AEP Ohio's initial brief is taken straight from Commission approved tariffs as ordered by the Commission in the respective cases. The DP&L information was taken from the Dayton Power and Light Company Tariff Second Revised Sheet No. G25, on file with the Commission. (See Attachment 1). The Duke information was taken from its tariffs on file with the Commission. Specifically, the information is provided in Duke's 1) Rider SRA-CD reflected on P.U.C.O. Electric No. 19, Sheet No. 54.4 and 2) Rider SRA-SRT reflected on P.U.C.O. Electric No. 19, Sheet No. 56.20 (collectively See Attachment 2). The application of Duke's tariff provisions can be found in the Commission's Opinion and Order in Commission case number 08-920 on pages 14 and pages 26-28.

The Commission has the authority to recognize its own decisions and the tariffs it approves. "It is settled that the published tariff, so long as in force, has the effect of a statute[.]" *Anthony Carlin Co. v. Nines* (1923), 107 Ohio St. 328, 333.¹ In essence, OCC and IEU are objecting to a citation to a Commission issued document that has the standing of a statute. A document that is easily located on the Commission's website.

The Commission recognizes that it is "not an unusual or novel concept that the

¹ See also *Chesner v. Stewart Title Guar. Co.*, No. 1:06CV00476, 2009 U.S. Dist. LEXIS 22453, at *15 (N.D. Ohio Jan. 9, 2009) ("Ohio courts have held that the rate filings or tariffs, 'once approved by the relevant overseer, 'have the force and effect of law.'" (quoting *Barr v. Ohio Edison Co.* (Feb. 25, 1995), 9th Dist. No. 16629); *Vorhees v. Jovingo*, 4th Dist. Nos. 04CA16, 04CA17 and 04CA18, 2005-Ohio-4948, ¶46 ("A tariff filed in accordance with the law has the force and effect of a statute."), appeal not allowed, 108 Ohio St.3d 1473, 2006-Ohio-665; *Carter v. American Teleph. & Telegraph. Co.*, 365 F.2d 486, 496 (5th Cir. 1966) ("[A] tariff, required by law to be filed, is not a mere contract. It is the law.").

Commission, on its own motion, should take administrative notice of a public document, such as a tariff, that exists in its own records. Additionally, the tariff does not need to be explained by the Commission, but rather speaks for itself" *United Telephone Company of Ohio dba Embarq*, Case No. 07-760-TP-BLS (Entry on Rehearing dated February 13, 2008). In fact, the Commission has taken administrative notice of tariff provisions of other Ohio utilities for comparison purposes. See *In the Matter of the Complaint of Buckeye Linen Service, Complainant, v. Ohio Power Company*, Case No. 93-782-EL-CSS (Opinion & Order dated April 7, 1994) ("for purposes of comparison, the examiner took administrative notice of the tariffs of the following utility companies: Toledo Edison Company, Cincinnati Gas & Electric Company, Cleveland Electric Illuminating Company, Columbus Southern Power Company, Dayton Power and Light Company, and Ohio Power Company"). For these reasons, OCC's and IEU's arguments must be rejected.

The support cited by OCC in its motion does not support the relief it seeks. OCC cites to an Ohio American Opinion and Order in footnote 2 of its motion as support for the statement that the Commission recently granted a number of OCC's motion to strike non-record information in a post-hearing brief. What OCC did not share with the Commission is that the Commission denied OCC's request to strike a reference to the Federal Register and to a FirstEnergy tariff. The Commission did grant the striking of past testimony from other cases and reports used elsewhere, but consistent with the case law and common practice, the tariff was upheld as a proper document to use in the brief. The Commission can follow the authority provided by OCC and again deny the motion to strike and recognize the tariff comparison.

The Commission is in the best position to determine the meaning of its own decisions and apply its decisions as it sees fit when faced with decisions in other cases. The table is merely a tool to assist the Commission in applying its previously made decisions to provide context for what else is present in the industry. The circumstances surrounding the approval of the amounts is known by the Commission and can be weighed as the Commission sees fit.

The Moving Parties warning about the Commission record before the Supreme Court of Ohio is also without merit. In the decision leading to the remand, the Court discussed the need for a more developed record to support the findings reached by the Commission. Any insinuation that the Court was warning the Commission about relying on matters outside of the record provides an inaccurate analysis of the Court's ruling and the facts underlying the items sought to be stricken. However, to the extent any party may consider Commission orders and Commission approved tariffs outside of the allowable documents for the Commission to rely upon, the Commission, as it did in the *Buckeye Linen Service* case discussed above, can simply take administrative notice of its previous work to prevent the concern raised by intervenors that reliance upon this information as support for any Commission decision should the Commission ultimately reinforce its initial decision with a broader scope of evidentiary support and deeper explanation as requested by the Court.

It should also be noted that the question about whether Duke had a POLR charge was a point previously raised in the docket and even a point of confusion in the hearing. Specifically, in the cross-examination of AEP Ohio witness Thomas, counsel for Constellation asked the witness about a POLR charge for Duke. The questions assumed

the lack of a charge, while the witness testified there was a tariff charge. Specifically the transcript reflects the following:

Q. Isn't it true that in Duke the only POLR payment is a 15 percent penalty if a customer returns before the end of the ESP period?

A. No I believe they have an additional POLR charge as well.

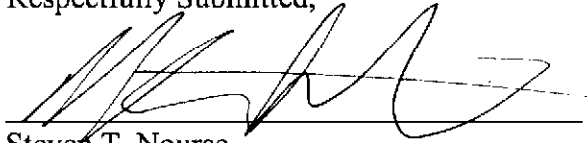
Q. And what's the basis of that understanding?

A. I recall that they have a tariff POLR charge. I don't recall the details, but I recall that they do have a tariff POLR charge.

Tr. Vol. II at 287 (Cross-examination of AEP Ohio witness Thomas). The existence of Duke's tariff was in the record and the table populated the representation of the witness with Commission approved data. In addition, this is not the first time the Moving Parties have been presented the table in this docket. AEP Ohio included this table, prior to the hearing, in its May 20, 2011 Initial Merit Filing on Remand at page 20, that was docketed and served on all parties. The inclusion of Commission approved tariffs and orders provides the proper context and clarifies the point of confusion left in the record.

AEP Ohio respectfully requests the Commission to deny the motions to strike the information derived from Commission orders and approved tariffs and take administrative notice for purposes of doing a comparison as the Commission sees fit.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Steven T. Nourse', is written over a horizontal line.

Steven T. Nourse

Matthew J. Satterwhite

American Electric Power Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215-2373

Telephone: (614) 716-1608

Facsimile: (614) 716-2950

stnourse@aep.com

mjsatterwhite@aep.com

Daniel R. Conway

Porter Wright Morris & Arthur

Huntington Center

41 S. High Street

Columbus, Ohio 43215

Telephone: (614) 227-2770

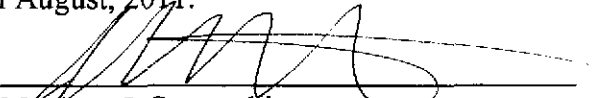
Fax: (614) 227-2100

dconway@porterwright.com

**Counsel for Columbus Southern Power
Company and Ohio Power Company**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Columbus Southern Power Company's and Ohio Power Company's Memorandum Contra Motion to Strike has been served upon the below-named counsel and Attorney Examiners via electronic mail this 16th day of August, 2011.


Matthew J. Satterwhite

sbaron@jkenn.com
lkollen@jkenn.com
charlieking@snavelly-king.com
mkurtz@bkllawfirm.com
dboehm@bkllawfirm.com
grady@occ.state.oh.us
etter@occ.state.oh.us
roberts@occ.state.oh.us
idzkowski@occ.state.oh.us
dconway@porterwright.com
jbentine@cwslaw.com
myurick@cwslaw.com
khiggins@energystrat.com
barthroyer@aol.com
gary.a.jeffries@dom.com
nmoser@theOEC.org
trent@theOEC.org
henryeckhart@aol.com
nedford@fuse.net
rstanfield@nrdc.org
dsullivan@nrdc.org
tammy.turkenton@puc.state.oh.us
thomas.lindgren@puc.state.oh.us
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com
drinebolt@aol.com
cmooney2@columbus.rr.com
sarah.parrot@puc.state.oh.us

ricks@ohanet.org
tobrien@bricker.com
david.fein@constellation.com
cynthia.a.fonner@constellation.com
mhpetricoff@vssp.com
smhoward@vssp.com
cgoodman@energymarketers.com
bsingh@integrysenergy.com
lbell33@aol.com
kschmidt@ohiomfg.com
sdebroff@sasllp.com
apetersen@sasllp.com
sromeo@sasllp.com
bedwards@aldenlaw.net
sbloomfield@bricker.com
todonnell@bricker.com
cvince@sonnenschein.com
preed@sonnenschein.com
ehand@sonnenschein.com
erii@sonnenschein.com
tommy.temple@ormet.com
agamarra@wrassoc.com
steven.huhman@morganstanley.com
dmancino@mwe.com
glawrence@mwe.com
gwung@mwe.com
stephen.chriss@wal-mart.com
lgearhardt@ofbf.org
cmiller@szd.com
gduinn@szd.com
greta.see@puc.state.oh.us

ATTACHMENT 1

THE DAYTON POWER AND LIGHT COMPANY
MacGregor Park
1065 Woodman Dr.
Dayton, Ohio 45432

Second Revised Sheet No. G25
Cancels
First Revised Sheet No. G25
Page 1 of 2

P.U.C.O. No. 17
ELECTRIC GENERATION SERVICE
RATE STABILIZATION CHARGE

DESCRIPTION:

The Rate Stabilization Charge (RSC) rider is intended to compensate DP&L for providing stabilized rates for customers and Provider of Last Resort Service.

APPLICABLE:

The RSC rider will be assessed beginning January 1, 2006 on all Customers served under the Electric Generation Service Tariff Sheets G9-G18 based on the following rates.

CHARGES:

Residential

Energy Charge (0-750 kWh)	\$0.00634	/kWh
Energy Charge (over 750 kWh)	\$0.00517	/kWh

Residential Heating – Rate A

Energy Charge (0-750 kWh)	\$0.00634	/kWh
Energy Charge (over 750 kWh) Summer	\$0.00517	/kWh
Energy Charge (over 750 kWh) Winter	\$0.00310	/kWh

Residential Heating – Rate B

Energy Charge (0-750 kWh)	\$0.00634	/kWh
Energy Charge (over 750 kWh) Summer	\$0.00517	/kWh
Energy Charge (over 750 kWh but less than first 150 kWh Per kW of billing Demand) Winter	\$0.00517	/kWh
Energy Charge (all kWh over 150 kWh per kW of billing Demand) Winter	\$0.00165	/kWh

Secondary

Billed Demand (over 5 kW)	\$0.81245	/kW
Energy Charge (0-1,500kWh)	\$0.00681	/kWh
Energy Charge (1,501-125,000 kWh)	\$0.00299	/kWh
Energy Charge (over 125,000 kWh)	\$0.00254	/kWh
Max Charge	\$0.01587	/kWh

Filed pursuant to the Opinion and Order in Case No. 09-1908-EL-ATA dated April 6, 2010, of the Public Utilities Commission of Ohio.

Issued April 29, 2010

Effective May 1, 2010

Issued by
PAUL M. BARBAS, President and Chief Executive Officer

THE DAYTON POWER AND LIGHT COMPANY
MacGregor Park
1065 Woodman Dr.
Dayton, Ohio 45432

Second Revised Sheet No. G25
Cancels
First Revised Sheet No. G25
Page 2 of 2

P.U.C.O. No. 17
ELECTRIC GENERATION SERVICE
RATE STABILIZATION CHARGE

Primary

Billed Demand	\$1.00212	/kW
Energy Charge	\$0.00239	/kWh
Max Charge	\$0.01675	/kWh

Primary-Substation

Billed Demand	\$1.05943	/kW
Energy Charge	\$0.00228	/kWh

High Voltage

Billed Demand	\$1.03479	/kW
Energy Charge	\$0.00225	/kWh

Private Outdoor Lighting

9,500 Lumens High Pressure Sodium	\$0.11074	/lamp/month
28,000 Lumens High Pressure Sodium	\$0.24688	/lamp/month
7,000 Lumens Mercury	\$0.21297	/lamp/month
21,000 Lumens Mercury	\$0.39604	/lamp/month
2,500 Lumens Incandescent	\$0.26302	/lamp/month
7,000 Lumens Fluorescent	\$0.37072	/lamp/month
4,000 Lumens PT Mercury	\$0.59186	/lamp/month

School

Energy Charge	\$0.00594	/kWh
---------------	-----------	------

Street Lighting

Energy Charge	\$0.00270	/kWh
---------------	-----------	------

Filed pursuant to the Opinion and Order in Case No. 09-1908-EL-ATA dated April 6, 2010, of the Public Utilities Commission of Ohio.

Issued April 29, 2010

Effective May 1, 2010

Issued by
PAUL M. BARBAS, President and Chief Executive Officer

ATTACHMENT 2

RIDER SRA-CD

CAPACITY DEDICATION RIDER

APPLICABILITY

Applicable to all jurisdictional retail customers in the Company's electric service area.

CHARGE

All applicable kWh are subject to the Capacity Dedication Rider Charge.

The following rates are effective January 2, 2009.

<u>Tariff Sheet</u>	<u>SRA-CD Charge</u> (per kWh/kW)
Rate RS, Residential Service	
Summer, First 1000 kWh	\$0.002651
Summer, Additional kWh	\$0.003359
Winter, First 1000 kWh	\$0.002651
Winter, Additional kWh	\$0.001000
Rate ORH, Optional Residential Service With Electric Space Heating	
Summer, First 1000 kWh	\$0.002367
Summer, Additional kWh	\$0.002836
Winter, First 1000 kWh	\$0.002366
Winter, Additional kWh	\$0.001225
Winter, kWh greater than 150 times demand	\$0.000766
Rate TD, Optional Time-of-Day Rate	
Summer, On-Peak kWh	\$0.005405
Summer, Off-Peak kWh	\$0.000789
Winter, On-Peak kWh	\$0.004249
Winter, Off-Peak kWh	\$0.000790
Rate CUR, Common Use Residential Service	
Summer, First 1000 kWh	\$0.002651
Summer, Additional kWh	\$0.003359
Winter, First 1000 kWh	\$0.002651
Winter, Additional kWh	\$0.001000
Rate DS, Service at Secondary Distribution Voltage	
First 1000 kW	\$0.459400
Additional kW	\$0.363400
Billing Demand Times 300	\$0.001175
Additional kWh	\$0.000976
Rate GS-FL, Optional Unmetered For Small Fixed Loads	
kWh Greater Than or Equal to 540 Hours	\$0.003902
kWh Less Than 540 Hours	\$0.004486
Rate EH, Optional Rate For Electric Space Heating	
All kWh	\$0.001601

Filed pursuant to an Order dated December 17, 2008 in Case No. 08-920-EL-SSO before the Public Utilities Commission of Ohio.

Issued: December 18, 2008

Issued by Julie Janson, President

Effective: January 2, 2009

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Electric No. 19
Sheet No. 54.4
Cancels and Supersedes
Sheet No. 54.3
Page 2 of 2

CHARGES (Contd.)

Tariff Sheet

SRA-CD Charge
(per kWh/kW)

Rate DM, Secondary Distribution Service, Small	
Summer, First 2800 kWh	\$0.003514
Summer, Next 3200 kWh	\$0.000897
Summer, Additional kWh	\$0.000391
Winter, First 2800 kWh	\$0.002789
Winter, Next 3200 kWh	\$0.000898
Winter, Additional kWh	\$0.000371
Rate DP, Service at Primary Distribution Voltage	
First 1000 kW	\$0.414900
Additional kW	\$0.327300
Billing Demand Times 300	\$0.001323
Additional kWh	\$0.001061
Rate TS, Service at Transmission Voltage	
First 50,000 kVA	\$0.503000
Additional kVA	\$0.362600
Billing Demand Times 300	\$0.000864
Additional kWh	\$0.000983
Rate SL, Street Lighting Service	
All kWh	\$0.001728
Rate TL, Traffic Lighting Service	
All kWh	\$0.001011
Rate OL, Outdoor Lighting Service	
All kWh	\$0.001728
Rate NSU, Street Lighting Service for Non-Standard Units	
All kWh	\$0.001728
Rate NSP, Private Outdoor Lighting for Non-Standard Units	
All kWh	\$0.001728
Rate SC, Street Lighting Service - Customer Owned	
All kWh	\$0.001728
Energy Only - All kWh	\$0.000688
Rate SE, Street Lighting Service - Overhead Equivalent	
All kWh	\$0.001728
Rate UOLS, Unmetered Outdoor Lighting Electric Service	
All kWh	\$0.000711

Filed pursuant to an Order dated December 17, 2008 in Case No. 08-920-EL-SSO before the Public Utilities Commission of Ohio.

Issued: December 18, 2008

Issued by Julie Janson, President

Effective: January 2, 2009

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Electric No. 19
Sheet No. 56.20
Cancels and Supersedes
Sheet No. 56.19
Page 1 of 2

RIDER SRA-SRT

SYSTEM RELIABILITY TRACKER

APPLICABILITY

Applicable to all jurisdictional retail customers in the Company's electric service area.

CHARGE

Rider SRA-SRT applies to all customers, except those customers that are eligible to avoid it as described below in the "Avoidance of System Reliability Tracker Charge" section.

For all customers, these rates are effective beginning with the first billing cycle of April, 2011:

<u>Tariff Sheet</u>	<u>SRA-SRT Charge</u> (\$/kWh;\$/kW)
Rate RS, Residential Service	
All kWh	\$0.000023
Rate ORH, Optional Residential Service with Electric Space Heating	
All kWh	\$0.000023
Rate TD-AM, Optional Time-of-Day Rate for Residential Service with Advanced Metering (Pilot)	
All kWh	\$0.000023
Rate TD, Optional Time-of-Day Rate	
All kWh	\$0.000023
Rate CUR, Common Use Residential Service	
All kWh	\$0.000023
Rate DS, Service at Secondary Distribution Voltage	
First 1,000 kW	\$0.195300
Additional kW	\$0.206500
Billing Demand Times 300	\$0.000448
Additional kWh	\$0.000136
Rate GS-FL, Optional Unmetered For Small Fixed Loads	
All kWh	\$0.000663
Rate EH, Optional Rate For Electric Space Heating	
All kWh	\$0.000982
Rate DM, Secondary Distribution Service, Small	
All kWh	\$0.001461
Rate DP, Service at Primary Distribution Voltage	
First 1000 kW	\$0.042600
Additional kW	\$0.030700
Billing Demand Times 300	\$0.000105
Additional kWh	\$0.000040
Rate TS, Service at Transmission Voltage	
First 50,000 kVA	\$0.241200
Additional kVA	\$0.241200
Billing Demand Times 300	\$0.000269
Additional kWh	\$0.000161

Filed pursuant to an Order dated December 17, 2008 in Case No. 08-920-EL-SSO, et al., before the Public Utilities Commission of Ohio.

Issued: February 28, 2011

Issued by Julie Janson, President

Effective: April 1, 2011

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Electric No. 19
Sheet No. 56.20
Cancels and Supersedes
Sheet No. 56.19
Page 2 of 2

<u>Tariff Sheet</u>	<u>SRA-SRT Charge</u> (\$/kWh; \$/kW)
Rate SL, Street Lighting Service All kWh	\$0.001131
Rate TL, Traffic Lighting Service All kWh	\$0.001131
Rate OL, Outdoor Lighting Service All kWh	\$0.001131
Rate NSU, Street Lighting Service for Non-Standard Units All kWh	\$0.001131
Rate NSP, Private Outdoor Lighting for Non-Standard Units All kWh	\$0.001131
Rate SC, Street Lighting Service - Customer Owned All kWh	\$0.001131
Rate SE, Street Lighting Service - Overhead Equivalent All kWh	\$0.001131
Rate UOLS, Unmetered Outdoor Lighting Electric Service All kWh	\$0.001131

AVOIDANCE OF SYSTEM RELIABILITY TRACKER CHARGE

Residential customers receiving generation service through a governmental aggregator will avoid (waive) Rider SRA-SRT if the governmental aggregator notifies the Company at least sixty (60) days prior to the start of the governmental aggregation of its intent to place all Residential End-Use Customers served by the governmental aggregation on the Rider SRA-SRT waiver program and to maintain the governmental aggregation through December 31, 2011. If the aggregated Residential End-Use Customer returns to the ESP-SSO prior to December 31, 2011, such Residential End-Use Customer will be billed a monthly early return premium based on 15% of the applicable generation charges and Riders in addition to the normal charges calculated per the ESP-SSO.

AVOIDANCE OF SYSTEM RELIABILITY TRACKER CHARGE AND RECEIPT OF SHOPPING CREDIT

Non-residential customers who have signed or will sign a contract with DE-Ohio, or provide a CRES contract to DE-Ohio, or provide a release in the form approved by the Commission in Case No. 03-93-EL-ATA indicating that the customer will remain off of ESP-SSO service through December 31, 2011, may avoid Rider SRA-SRT charges and receive a shopping credit. More specifically, to avoid Rider SRA-SRT charges, the customer must be willing to return to DE-Ohio's ESP-SSO service at 115% of DE-Ohio's ESP-SSO price, including all riders except for distribution riders.

Filed pursuant to an Order dated December 17, 2008 in Case No. 08-920-EL-SSO, et al., before the Public Utilities Commission of Ohio.

Issued: February 28, 2011

Effective: April 1, 2011

Issued by Julie Janson, President