

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Vectren)
Retail, LLC, d/b/a Vectren Source, for) Case No. 02-1668-GA-CRS
Certification as a Retail Natural Gas)
Supplier.)

ENTRY

The attorney examiner finds:

- (1) By finding and order issued July 11, 2002, the Commission granted Vectren Retail, LLC d/b/a Vectren Source (Vectren Source) authority to operate as a competitive retail natural gas service (CRNGS) supplier for a period of two years.
- (2) In accordance with Section 4929.20 *et seq.*, Revised Code, Vectren Source renewed its certification as a CRNGS in 2004, 2006, and 2008. As part of its initial application filed in 2002 and each of its applications to renew its certification, Vectren Source requested and was granted protective orders pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), for certain exhibits or portions of exhibits filed in support of its applications.
- (3) On May 21, 2010, Vectren Source filed its fourth application for renewal of its certification, as well as a motion for a protective order, which is under consideration in this entry, of exhibits C-3, C-4, and C-5 of that application. Vectren Source also requests renewal of all previously granted protective orders in this docket and asks, consistent with the previous entries in this docket, for consolidation of the expiration dates for the previously granted protective orders with the expiration date for the protective order requested in connection with its most recent application for renewal of its certification.
- (4) Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term

“public records” excludes information which, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the “state or federal law” exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.

- (5) Similarly, Rule 4901-1-24, O.A.C., allows an attorney examiner to issue an order to protect the confidentiality of information contained in a filed document, “to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”
- (6) Ohio law defines a trade secret as “information . . . that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Section 1333.61(D), Revised Code.
- (7) The attorney examiner finds that the same procedures applicable to the initial issuance of a protective order should be used in considering the extension of a protective order. Therefore, in order to determine whether to grant or to extend a protective order, it is necessary to review the materials in question; to assess whether the information constitutes a trade secret under Ohio law; to decide whether non-disclosure of the materials will be consistent with the purposes of Title 49, Revised Code; and to evaluate whether the confidential material can reasonably be redacted.
- (8) The exhibits covered by Vectren Source’s 2010 motion consist of financial statements, financial arrangements, and forecasted financial statements. Vectren Source submits that this information is competitively sensitive and highly proprietary. It contends that public disclosure of this information would jeopardize its business position in negotiations with other parties and its ability to compete. Vectren confirms that this

information is not generally known by the public and is held in confidence in the normal course of business.

- (9) The attorney examiner has reviewed the information included in Vectren Source's motion for protective order of exhibits C-3, C-4, and C-5 of its 2010 certification renewal application, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in exhibits C-3, C-4, and C-5 of Vectren Source's 2010 certification renewal application contains trade secret information. Its release is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Vectren Source's motion for protective order of exhibits C-3, C-4, and C-5 of its 2010 certification renewal application is reasonable and should be granted.
- (10) Turning next to Vectren Source's request to extend the protective treatment afforded to the information from Vectren's 2002, 2004, 2006, and 2008 applications, the attorney examiner finds that exhibit C-4 of the 2002 application, exhibits C-4 and C-5 of the 2004 application, and exhibits C-3, C-4, and C-5 of the 2006 and 2008 applications, constitute trade secret information and thus their release is prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code, and further finds that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Vectren Source's request for renewal of the protective treatment for exhibit C-4

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

of the 2002 application, exhibits C-4 and C-5 of the 2004 application, and exhibits C-3, C-4, and C-5 of the 2006 and 2008 applications is reasonable and should be granted.

- (11) With regard to exhibits C-3 and C-5 of Vectren Source's 2002 application and exhibit C-3 of its 2004 application, the attorney examiner finds that the information contained in these exhibits no longer constitutes trade secret information. The information detailed in these exhibits relates to Vectren Source's financial performance and financial condition from December 2001 through the end of 2003, along with forecasts of expected results for 2002 and 2003. While Vectren Source argues that the release of this information would jeopardize Vectren Source's business position in negotiations with other parties, as well as its ability to compete, the attorney examiner finds that because the information in these exhibits is outdated, it can no longer be considered sensitive. Accordingly, the attorney examiner finds that Vectren Source's request for renewal of the protective treatment for exhibits C-3 and C-5 of its 2002 application and exhibit C-3 of its 2004 application should be denied.
- (12) Rule 4901-1-24(D)(4), O.A.C., provides for protective orders relating to gas marketers' certification renewal applications to expire after 24 months. The attorney examiner finds that the 24-month provision in Rule 4901-1-24(D)(4), O.A.C., is intended to synchronize the expiration of protective orders related to gas marketers' certification applications with the expiration of their application and that the expiration dates should allow adequate time for consideration of any motion for extension. The attorney examiner also finds it reasonable to continue the consolidation of the expiration dates of all protective orders granted in this docket. Therefore, confidential treatment should be afforded to exhibit C-4 of the 2002 application, exhibits C-4 and C-5 of the 2004 application, and exhibits C-3, C-4, and C-5 of the 2006, 2008, and 2010 applications, for a period ending 24 months from the effective date of the most recent certificate issued to Vectren Source, or until July 12, 2012. Until that date, the docketing division should maintain, under seal, exhibit C-4 of the 2002 application, exhibits C-4 and C-5 of the 2004 application, and exhibits C-3, C-4, and C-5 of the 2006, 2008, and 2010 applications.

- (13) On July 28, 2010, the docketing division should release exhibits C-3 and C-5 of Vectren Source's 2002 application, and exhibit C-3 of its 2004 application, as filed on July 5, 2002 and June 10, 2004, respectively.
- (14) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Vectren Source wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date.

It is, therefore,

ORDERED, That the motion by Vectren Source for protective treatment of exhibits C-3, C-4, and C-5 of its 2010 application, filed on May 21, 2010, be granted for a period ending 24 months from the effective date of the most recent certificate issued to Vectren Source, or until July 12, 2012. It is, further,

ORDERED, That the motion by Vectren Source for renewed protective treatment of exhibit C-4 of its 2002 application, filed on July 5, 2002; exhibits C-4 and C-5 of Vectren Source's 2006 application, filed on June 10, 2004; and exhibits C-3, C-4, and C-5 of Vectren Source's 2006 and 2008 applications, filed on May 4, 2006, and June 10, 2008, respectively; be granted for a period ending 24 months from the effective date of the most recent certificate issued to Vectren Source, or until July 12, 2012. It is, further,


ORDERED, That the motion by Vectren Source for the renewal of the protective treatment for exhibits C-3 and C-5 of Vectren Source's 2002 application, filed on July 5, 2002, and exhibit C-3 of its 2004 application, filed on June 10, 2004, be denied. It is, further,


ORDERED, That the Commission's docketing division shall maintain, under seal, exhibit C-4 of the 2002 application, filed on July 5, 2002; exhibits C-4 and C-5 of the 2004 application, filed on June 10, 2004; and exhibits C-3, C-4, and C-5 of the 2006, 2008, and 2010 applications, filed on May 4, 2006, June 10, 2008, and May 21, 2010, respectively; for a period ending 24 months from the effective date of the most recent certificate issued to Vectren Source, or until July 12, 2012. It is, further,

ORDERED, That, on July 28, 2010, the docketing division should release exhibits C-3 and C-5 of Vectren Source's 2002 application, filed on July 5, 2002, and exhibit C-3 of Vectren Source's 2004 application, filed on June 10, 2004. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

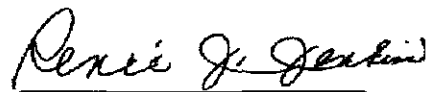
THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Henry H. Phillips-Gary
Attorney Examiner

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Entered in the Journal

JUL 19 2010


Renee J. Jenkins
Secretary