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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of  
Direct Energy Source, LLC d/b/a  
Vectren Source for Certification  
as a Retail Natural Gas Supplier.

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Case No. 02-1668-GA-CRS

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MOTION FOR PROTECTIVE ORDER

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June 12, 2012

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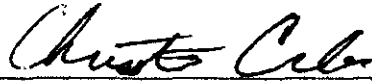
**MOTION FOR PROTECTIVE ORDER**

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Pursuant to the provisions of Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), Direct Energy Source, LLC d/b/a Vectren Source ("Direct Energy Source") respectfully moves the Public Utilities Commission of Ohio ("Commission") to issue a protective order to protect the confidentiality of and prohibit the disclosure of certain documents filed simultaneously with this motion in the above-captioned docket. The documents in Exhibits C-4 Financial Arrangements ("Exhibit C-4") and C-5 Forecasted Financial Statements ("Exhibit C-5"), contain competitively sensitive and highly proprietary business financial information comprising of trade secrets. These documents have been clearly marked as confidential and are hereby filed under seal, separate from the remainder of the materials that comprise Direct Energy Source's Renewal Certification Application filed simultaneously with this Motion.

The grounds for the instant Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT**

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Contemporaneously with this Motion for Protective Order and Memorandum in Support, Direct Energy Source filed its Renewal Certification Application for Competitive Retail Natural Gas Suppliers ("CRNGS"). The Application contains all of the required information and materials in accordance with the Commission's Renewal Certification Filing Instructions for Competitive Retail Natural Gas Suppliers and Rule 4901-1-24, O.A.C. As part of the Application materials, the Commission requested information regarding Direct Energy Source's financial arrangements (Exhibit C-4) and forecasted financial statements (Exhibit C-5). Direct Energy Source, LLC has submitted the requested information under seal because the documents contain competitively sensitive and highly proprietary business financial information, which require confidential treatment. Consequently, Direct Energy Source requests that the Commission maintain the confidential nature of these documents and the information contained therein, and protects the documents from public disclosure.

Specifically, Direct Energy Source's asks the Commission to issue a protective order consistent with the Commission's handling of confidential information submitted with previous Vectren Source certification/recertification applications.<sup>1</sup> The Commission granted Vectren Source protective treatment of Exhibits C-4 and C-5 in their entirety in each of Vectren Source's previous certification/recertification applications. The Commission has also granted Exhibit C-4 partial protective treatment in all of Vectren Source's previous recertification applications, shielding from disclosure the entity names contained within the Financial Services and Security Agreement as well as the terms of all promissory notes. Therefore, regarding Direct Energy Source, LLC 2012 CRNGS recertification Application, Direct Energy Source respectfully requests the Commission again grant protective treatment of (1) Exhibits C-5 in their entirety and (2) Exhibit C-4 to the extent it contains the terms of promissory notes as well as entity names in the Financial Services and Security Agreement.

Rule 4901-1-24(D), O.A.C., provides for the issuance of an order that is necessary to protect the confidentiality of information contained in documents filed at the Commission to the extent that state and federal law prohibit the release of such information and where non-disclosure of the information is not inconsistent with the

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<sup>1</sup> See *In the Matter of the Applications of the Following Entities for a Certificate to Provide Competitive Retail Natural Gas Service in Ohio*, PUCO Case Nos. 02-1654-GA-CRS, et al., Entry at 3 (July 14, 2003); *In the Matter of the Applications of Vectren Retail, LLC, d/b/a as Vectren Source, et al., for Certification as Retail Natural Gas Suppliers in the State of Ohio*, PUCO Case Nos. 02-1668-GA-CRS, et al, Entry at 3 (August 11, 2004); *In the Matter of the Application of Vectren Retail, LLC, d/b/a Vectren Source for Certification as a Retail Natural Gas Supplier*, PUCO Case No. 02-1668-GA-CRS, Entry at 3 (August 11, 2006); *In the Matter of the Application of Vectren Retail, LLC, d/b/a Vectren Source for Certification as a Retail Natural Gas Supplier*, PUCO Case No. 02-1668-GA-CRS, Entry at 4-5 (January 8, 2007); *In the Matter of the Application of Vectren Retail, LLC, d/b/a Vectren Source for Certification as a Retail Natural Gas Supplier*, PUCO Case No. 02-1668-GA-CRS, Entry at 4 (July 18, 2008); *In the Matter of the Application of Vectren Retail, LLC, d/b/a Vectren Source for Certification as a Retail Natural Gas Supplier*, PUCO Case No. 02-1668-GA-CRS, Entry at 3 (July 19, 2010); *In the Matter of the Application of Vectren Retail, LLC, d/b/a Vectren Source for Certification as a Retail Natural Gas Supplier*, PUCO Case NO.02-1668-GA-CRS & 11-1078-EL-CRS, Entry at 9 (January 30, 2012).

purposes of Title 49 of the Revised Code ("R.C."). State law recognizes the need to protect information that is confidential in nature, as is the information contained in Exhibits C-4, and C-5. Section 4929.23(A), R.C., specifically permits the Commission to grant confidentiality to competitive information.<sup>2</sup> Sections 4901.12 and 4905.07, R.C., facilitate the protection of trade secrets in the Commission's possession.<sup>3</sup> Sections 4901.12 and 4905.07, R.C., reference Section 149.43, R.C., and therefore incorporate the provision that excepts from the public record information and records of which the release is prohibited by law.<sup>4</sup> State law prohibits the release of information meeting the definition of a trade secret. Additionally, non-disclosure of the information will not impair the purposes of Title 49 as the Commission and its Staff will have full access to the requested information in order to complete their review process.

The documents and information contained in Exhibits C-4 and C-5 are comprised of competitively sensitive and highly proprietary business financial information falling within the statutory characterization of a trade secret as defined by Section 1333.61(D), R.C. The definition of trade secret contained in Section 1333.61(D), R.C., is as follows:

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<sup>2</sup> Section 4929.23(A), R.C., provides: "A retail natural gas supplier or governmental aggregator subject to certification under section 4929.20 of the Revised Code shall provide the public utilities commission with such information, regarding a competitive retail natural gas service for which it is subject to certification, as the commission considers necessary to carry out sections 4929.20 to 4929.24 of the Revised Code. The commission shall take such measures as it considers necessary to protect the confidentiality of any such information."

<sup>3</sup> Section 4901.12, R.C., provides: "Except as otherwise provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all proceedings of the public utilities commission and all documents and records in its possession are public records."

Section 4905.07, R.C., provides: "Except as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all facts and information in the possession of the public utilities commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature in its possession shall be open to inspection by interested parties or their attorneys."

<sup>4</sup> Section 149.43(A)(1)(v), R.C., provides in part: "'Public record' does not mean records the release of which is prohibited by state or federal law."

"Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, **financial information**, or listing of names, addresses, or telephone numbers, 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.

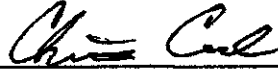
(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 1333.61(D), R.C. (emphasis added).

Clearly, financial arrangements and forecasted financial statements contain proprietary data and are confidential as trade secrets. Public disclosure of this information would jeopardize Direct Energy Source's business position in negotiations with other parties and its ability to compete. Direct Energy Source asserts that this information is not generally known by the public and is held in confidence in the normal course of business. Therefore, Direct Energy Source reasonably requests that the identified financial information contained in Exhibits C-4 and C-5 in this certificate renewal Application be deemed to contain trade secrets, and thus, be treated as confidential by this Commission and its Staff.

WHEREFORE, Direct Energy Source respectfully requests that this Motion for Protective Order be granted for the reasons set forth herein.

Respectfully submitted,



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