

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	)	
Vectren Retail, LLC d/b/a	)	Case No. 02-1668-GA-CRS
Vectren Source for 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. In accordance with Section 4929.20 *et seq.*, Revised Code, Vectren Source renewed its certification as a CRNGS in 2004 and 2006. 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.
- (2) On July 5, 2002, as supplemented on July 11, 2002, Vectren Source filed its 2002 financial statements (Exhibit C-3), 2002 financial arrangements (Exhibit C-4), 2002 forecasted financial statements (Exhibit C-5), and 2002 credit rating and financial services agreement (Supplemental Exhibit C-6) (collectively referred to as the 2002 Exhibits) in support of its application to become a CRNGS supplier. By attorney examiner entry issued June 8, 2005, Vectren Source was granted an extension of the protective order regarding its 2002 Exhibits, which are to remain under seal for an 18-month period ending January 22, 2007, in accordance with Rule 4901-1-24(F), O.A.C.
- (3) On June 10, 2004, Vectren Source filed its 2004 financial statements (Exhibit C-3), 2004 financial arrangements (Exhibit C-4), and 2004 forecasted financial statements (Exhibit C-5) (collectively referred to as the 2004 Exhibits) in support of its renewal application. By attorney examiner entry issued

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February 7, 2006, Vectren Source was granted an extension of the protective order regarding its 2004 Exhibits, which are to remain under seal for an 18-month period ending August 11, 2007, in accordance with Rule 4901-1-24(F), O.A.C.

- (4) On May 4, 2006, Vectren Source filed its 2006 financial statements (Exhibit C-3), 2006 financial arrangements (Exhibit C-4), and 2006 forecasted financial statements (Exhibit C-5) (collectively referred to as the 2006 Exhibits) in support of its renewal application. By attorney examiner entry issued August 11, 2006, Vectren Source was granted an extension of the protective order regarding its 2006 Exhibits, which are to remain under seal for an 18-month period ending February 11, 2008, in accordance with Rule 4901-1-24(F), O.A.C.
- (5) On November 2, 2006, pursuant to Rule 4901-1-24(F), O.A.C., Vectren Source filed a motion for extension of the protective order granted by the attorney examiner for the 2002 Exhibits. In addition, Vectren Source requested that the 2004 Exhibits and the 2006 Exhibits be re-granted protective treatment at the same time and that the due dates for renewal of the protective orders be consolidated. Vectren Source submits that such consolidation will minimize the number of requests the Commission will receive each year and enable Vectren Source to account for the several exhibits that must be renewed on an "18-month" basis.
- (6) 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 purpose 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*, 89 Ohio St.3d 396, 399 (2000).
- (7) 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."

- (8) Ohio law defines a trade secret as "information . . . that satisfies both of the following: (1) It derives independent economic value, actual and 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. The Ohio Supreme Court has adopted the following six factors to be used in analyzing a claim that information is a trade secret under that section:

- (1) [t]he extent to which the information is known outside the business;
- (2) the extent to which it is known to those inside the business, i.e., by the employees;
- (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information;
- (4) the savings effected and the value to the holder in having the information as against competitors;
- (5) the amount of effort or money expended in obtaining and developing the information; and
- (6) the amount of time and expense it would take for others to acquire and duplicate the information.

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

- (9) The Ohio Supreme Court has found that an *in camera* inspection is necessary to determine whether materials are entitled to protection from disclosure. *State ex rel. Allright Parking of Cleveland Inc. v. Cleveland*, 63 Ohio St.3d 772 (1992).
- (10) Rule 4901-1-24(D)(1), O.A.C., also provides that, where confidential material can be reasonably redacted from a

document without rendering the remaining document incomprehensible or of little meaning, redaction should be ordered rather than wholesale removal of the document from public scrutiny.

- (11) Thus, in order to determine whether to issue a protective order, it is necessary to review the material 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 purpose of Title 49, Revised Code; and to evaluate whether the confidential material can reasonably be redacted.
- (12) The attorney examiner has reviewed the 2002 Exhibits and the assertions set forth in the memorandum in support of Vectren Source's motion for extension of the protective order. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy, as well as the six-factor test set forth by the Ohio Supreme Court, the attorney examiner finds that the information in the 2002 Exhibits constitutes a trade secret. The release of these exhibits is, therefore, prohibited under state law. The attorney examiner also finds that non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that the 2002 Exhibits cannot be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that there is good cause to grant Vectren Source's motion for an extension of the protective order for the 2002 Exhibits.
- (13) With regard to Vectren Source's request that the 2004 and 2006 Exhibits be granted renewed protective treatment at this time so that the 2002, 2004, and 2006 Exhibits will have consolidated due dates for the future renewal of the protective orders, the attorney examiner finds Vectren Source's request to be reasonable and, therefore, Vectren Source's motion for consolidation of due dates should be granted.
- (14) Rule 4901-1-24(F), O.A.C., currently provides that, "[u]nless otherwise ordered, any order prohibiting public disclosure pursuant to paragraph (D) of this rule shall automatically

expire eighteen months after the date of its issuance, and such information may then be included in the public record of the proceeding. A party wishing to extend a protective order beyond eighteen months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order." By Finding and Order issued on December 6, 2006, in *In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD, the Commission modified Rule 4901-1-24(D)(4), O.A.C., stating that information included in gas marketers' renewal certification applications that is determined to be a trade secret shall be protected for 24 months instead of 18 months. While this new rule is not yet in effect, the attorney examiner finds it appropriate at this time to extend the 18-month period and protect the information in the 2002, 2004, and 2006 Exhibits for the 24-month period consistent with the Commission's recent order.

- (15) Accordingly, the docketing division should maintain under seal the following 2002, 2004, and 2006 Exhibits:
- a. 2002 financial statements (Exhibit C-3) filed July 5, 2002.
  - b. 2002 financial arrangements (Exhibit C-4) filed July 5, 2002.
  - c. 2002 forecasted financial statements (Exhibit C-5) filed July 5, 2002.
  - d. 2002 credit rating and financial services agreement (Supplemental Exhibit C-6) filed July 11, 2002.
  - e. 2004 financial statements (Exhibit C-3) filed June 10, 2004.
  - f. 2004 financial arrangements (Exhibit C-4) filed June 10, 2004.
  - g. 2004 forecasted financial statements (Exhibit C-5) filed June 10, 2004.
  - h. 2006 financial statements (Exhibit C-3) filed May 4, 2006.
  - i. 2006 financial arrangements (Exhibit C-4) filed May 4, 2006.
  - j. 2006 forecasted financial statements (Exhibit C-5) filed May 4, 2006.

This protective order shall be in effect for a period of 24 months from the date of this entry.

It is, therefore,

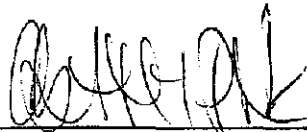
ORDERED, That Vectren Source's motion for an extension of the protective order for the 2002 Exhibits be granted. It is, further,

ORDERED, That Vectren Source's motion that protective treatment of the 2004 and 2006 Exhibits be renewed and that the 2002, 2004, and 2006 Exhibits due dates for renewal of the protective orders be consolidated is granted. It is, further,

ORDERED, That, as set forth in finding (15), the 2002, 2004, and 2006 Exhibits shall be maintained under seal for a period of 24 months from the date of this entry. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

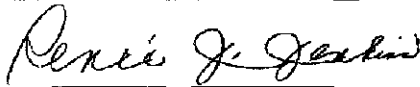


By: Christine M.T. Pirik  
Attorney Examiner

*RTG/hw*

Entered in the Journal

JAN 08 2007



Renee J. Jenkins  
Secretary