

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On July 5, 2002, Vectren Retail, LLC, d/b/a Vectren Source (Vectren) filed its initial application for certification as a retail natural gas supplier and a motion for protective treatment of exhibits C-3, C-4, and C-5 of the application, as well as the first supplemental response to exhibit C-6. On July 11, 2002, Vectren filed a second supplemental response to Exhibit C-6, also under seal. Vectren's motion for protective treatment of this information was granted on July 14, 2003, for a period of six months from the date of the entry. On December 2, 2003, Vectren moved for extension of the protective order. This extension was granted on January 22, 2004, for a period of 18 months, with regard to all information other than the first supplemental response to Exhibit C-6. On May 23, 2005, Vectren again moved for extension, which motion was granted on June 8, 2005, for a period of 18 months. On November 2, 2006, Vectren again moved for extension, which motion was granted on January 8, 2007, for a period of 24 months.
- (2) On June 10, 2004, Vectren filed its first application for renewal of its certification and a motion for protective treatment of exhibits C-3, C-4, and C-5 of that application. That motion was granted, with redactions required, on August 11, 2004, for a period of 18 months. On December 20, 2005, Vectren moved for extension of that order, which motion was granted on February 7, 2006, for a period of 18 months. Vectren included this protective order in its November 2, 2006, motion, asking for the due date to be consolidated with other protective orders. That motion was granted on January 8, 2007.
- (3) On May 4, 2006, Vectren filed its second application for renewal of its certification and a motion for protective treatment of exhibits C-3, C-4, and C-5 of that application. That motion was

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granted on August 11, 2006, for a period of 18 months. Vectren included this protective order in its November 2, 2006, motion, asking for the due date to be consolidated with other protective orders. That motion was granted on January 8, 2007.

- (4) On June 10, 2008, Vectren filed its third application for renewal of its certification and a motion, under consideration in this entry, for a protective order of exhibits C-3, C-4, and C-5 of that application. Vectren also asks for renewal of all previously granted protective orders in this docket and for consolidation of the due dates for renewal requests covering all such orders.
- (5) 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*, 89 Ohio St.3d 396, 399 (2000).
- (6) Similarly, Rule 4901-1-24, Ohio Administrative Code (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."
- (7) 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. 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:

- (a) The extent to which the information is known outside the business.
- (b) The extent to which it is known to those inside the business, i.e., by the employees.
- (c) The precautions taken by the holder of the trade secret to guard the secrecy of the information.
- (d) The savings effected and the value to the holder in having the information as against competitors.
- (e) The amount of effort or money expended in obtaining and developing the information.
- (f) 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).

- (8) 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).
- (9) 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.
- (10) 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.

- (11) The exhibits covered by Vectren's 2008 motion consist of financial statements, financial arrangements, and forecasted financial statements. Vectren 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.
- (12) The attorney examiner has reviewed the information in exhibits C-3, C-4, and C-5 of the 2008 application, as well as the assertions set forth in Vectren's motion. 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 exhibits filed with the 2008 application contain trade secret information. Their release is therefore prohibited under state law. The attorney examiner also finds that non-disclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that these exhibits cannot be reasonably redacted to remove the confidential information contained therein.
- (13) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders under Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. 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 examiner finds that Vectren's 2008 motion should be granted for a period of 24 months from the date of this entry. The examiner also finds it reasonable for the expiration dates of all other protective orders granted in this docket to be consolidated with this one. Therefore, until that date, the docketing division of the Commission should maintain exhibits C-3, C-4, and C-5 of Vectren's 2008, 2006, 2004, and 2002 certification applications under seal.
- (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 forty-five days in advance of the expiration date. If Vectren wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date.

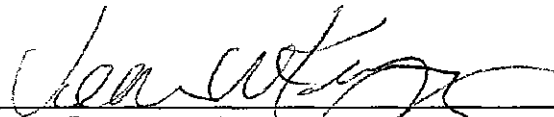
ORDERED, That the motion by Vectren for protective treatment of Schedules C-3, C-4, and C-5, filed on June 10, 2008, be granted for a period of 24 months from the date of this entry. It is, further,

ORDERED, That the motion by Vectren for consolidation of the expiration dates of all other protective orders in this docket with the expiration of the protective order covering the 2008 exhibits be granted. It is, further,

ORDERED, That the Commission's docketing division shall maintain, under seal, exhibits C-3, C-4, and C-5 of Dominion's 2002, 2004, 2006, and 2008 certification applications, as filed on July 5, 2002; June 10, 2004; May 4, 2006; and June 10, 2008, 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 all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Jeanne W. Kingery
Attorney Examiner

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Entered in the Journal

JUL 18 2008



Renee J. Jenkins
Secretary