

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of :  
Dominion Retail, Inc. for Renewal of :  
Certification as a Competitive Retail :  
Natural Gas Supplier. :

Case No. 02-1757-GA-CRS

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MOTION FOR PROTECTIVE ORDER  
OF  
DOMINION RETAIL, INC.

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Pursuant to Rule 4901-1-24(D), Ohio Administrative Code ("OAC"), Dominion Retail, Inc. ("Dominion Retail") hereby moves for a protective order to preserve the confidentiality of certain competitively-sensitive information contained in Exhibits C-3 and C-5 of the above-styled application filed herein on May 29, 2012. The basis for this motion is set forth in the accompanying memorandum in support. As required by Rule 4901-1-24(D)(2), OAC, three unredacted copies of Exhibits C-3 and C-5 for which protection is sought have been filed under seal.

WHEREFORE, Dominion Retail respectfully requests that its motion be granted.

Respectfully submitted,

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MEMORANDUM IN SUPPORT  
OF  
MOTION FOR PROTECTIVE ORDER  
OF  
DOMINION RETAIL, INC.

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On May 29, 2012, Dominion Retail, Inc. ("Dominion Retail") filed an application in this docket for a renewal of its certification as a supplier of competitive retail natural gas service in this state. As a part of its application, Dominion Retail moved for a protective order to prevent public disclosure of Exhibits C-3 and C-5 to the application, which contain, respectively, copies of its financial statements for the most recent two years and two years of projected financial statements relating to the service that is the subject of the application. Although the Commission issued the requested renewal certificate – Certificate No. 02-018G (6) – on June 29, 2012, Dominion Retail has since been advised by the Commission's legal department that a separate motion for a protective order to preserve the confidentiality of the information contained in Exhibits C-3 and C-5 is required. Accordingly, by the foregoing motion, Dominion Retail respectfully requests that the Commission issue an order preventing public disclosure of Exhibits C-3 and C-5 of its application for those reason set forth below. As required by Rule 4901-1-24(D)(2), OAC, Dominion Retail has filed herewith three copies of the confidential unredacted versions of Exhibits C-3 and C-5 under seal.

Rule 4901-1-24(D), OAC, provides, in pertinent part, as follows:

(D) Upon motion of any party or person filing a document with the commission's docketing division relative to a case before the commission, the commission, the legal director, the deputy legal director, or the attorney examiner assigned to the case may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, or the attorney examiner assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure.

Dominion Retail submits that its motion for protection is consistent with the criteria governing the issuance of protective orders set forth in the above rule, in that state law prohibits release of the information for which protection is sought and because non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

As described in the application, Dominion Retail is engaged in the business of supplying competitive retail natural gas service in this state. As the Commission well knows, the Ohio retail natural gas market is highly competitive, and disclosure of the financial information contained in the exhibits in question to its competitors would damage Dominion Retail's position in this market and have a detrimental effect on its ability to compete.

Competitively-sensitive information of the type contained in Exhibit C-3 and Exhibit C-5 is routinely accorded protected status by the Commission pursuant to Rule 4901-1-24(A)(7), OAC, based on its determination that such information constitutes a "trade secret, or other confidential research, development, (or) commercial information under Ohio law." Indeed, the statutory definition of a "trade secret" set out in Section 1333.61(D), Revised Code, includes "business information" that "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.” In a competitive environment, disclosure of Dominion Retail’s historical and forecasted financial information would disadvantage Dominion Retail.

The Ohio Supreme Court specifically cited the “the volatility and competitiveness of the electric industry” as a factor in affirming a Commission decision to accord protection to certain business information, stating that “(e)xposing a competitor’s business strategies and pricing points would likely have a negative impact on that provider’s viability.”<sup>1</sup> Plainly, this logic would apply with equal force to the Ohio natural gas market, which, if anything, is even more competitive than the Ohio electric market. Moreover, in considering similar requests for protection of the information submitted in Exhibits C-3 and Exhibit C-5 in other certification proceedings, including those of Dominion Retail, the Commission has granted motions for protective orders with respect to the very same information – *i.e.*, historical and forecasted financial statements – that is the subject of Dominion Retail’s motion in this case.<sup>2</sup> The information contained in Exhibits C-3 and C-5 is entitled to similar protection here.

Rule 4901-1-24(D)(1), OAC, provides that the public version of documents containing information for which protection is requested “should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information.” However, in this instance, this requirement would entail submitting what would essentially be blank documents, which would be a meaningless exercise. Thus, Dominion Retail did not file redacted Exhibits C-3 and C-5 with the application, and, consistent with the motion included in

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<sup>1</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, at 370, 2009-Ohio-604 (2009).

<sup>2</sup> See, e.g., *In the Matter of the Application of Renewal Application of Dominion Retail, Inc. for Certification by the Public Utilities Commission of Ohio as a Retail Generation Provider, Power Marketer, Power Broker and Aggregator*, Case No. 00-1781-EL-CRS (Entry dated December 15, 2010).

the application, seeks protection for these documents as a whole. Because the Commission and its staff will have full access to the information for which protection is requested, the Commission's ability to review this information will in no way be impaired by granting this motion, and no legitimate purpose would be served by public disclosure of the designated information.

WHEREFORE, Dominion Retail respectfully requests that Exhibits C-3 and C-5 of its application in this case be granted protected status and that the Commission grant the foregoing motion.

Respectfully submitted,



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