

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

Case No. 02-1668-GA-CRS

MOTION FOR EXTENSION OF
COMMISSION'S PROTECTIVE ORDER

Daniel J. Neilsen, Trial Attorney
McNees Wallace & Nurick LLC
Fifth Third Center
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
dneilsen@mwncmh.com

December 2, 2003

Attorneys for Vectren Retail, LLC

{C14268;}

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THE PUBLIC UTILITIES COMMISSION OF OHIO**

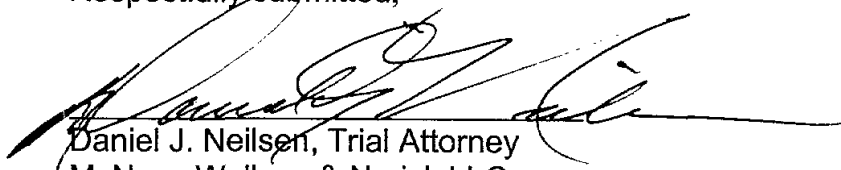
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Pursuant to the provisions of Rule 4901-1-24(F) of the Ohio Administrative Code ("O.A.C."), Vectren Retail, LLC d/b/a Vectren Source ("Vectren Source") respectfully moves the Public Utilities Commission of Ohio ("Commission") to extend its issuance of the Protective Order granted on July 14, 2003 to protect the confidentiality of and prohibit the disclosure of certain documents filed in the above-captioned docket. The documents in Exhibits C-3 Financial Statements ("Exhibit C-3"), C-4 Financial Arrangements ("Exhibit C-4"), C-5 Forecasted Financial Statements ("Exhibit C-5"), the Financial Services Agreement, which is supplemental information for Exhibit C-6 ("Exhibit C-6 Supplement") and the three-page Second Supplemental Information to Exhibit C-6, filed under seal on July 11, 2002 ("Second Supplemental Information to Exhibit C-6") contain competitively sensitive and highly proprietary business financial information comprising of trade secrets. These documents have been clearly marked as confidential and have been filed under seal, separate from the remainder of the materials that comprised Vectren Source's Application for Certification filed

simultaneously with the original Motion for Protective Order. The grounds for the instant Motion are detailed in the attached Memorandum in Support.

Respectfully submitted,



Daniel J. Neilsen, Trial Attorney
McNees Wallace & Nurick LLC
Fifth Third Center
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
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MEMORANDUM IN SUPPORT

Contemporaneously with the original Motion for Protective Order and Memorandum in Support, Vectren Source filed its Application for Certification to become a Retail Natural Gas Supplier. The Application contained all of the required information and materials in accordance with the Commission's Certification Application for Retail Natural Gas Suppliers instructions and Rule 4901-1-24, O.A.C. As part of the Application materials, the Commission requested information regarding Vectren Source's financial statements ("Exhibit C-3"), financial arrangements ("Exhibit C-4"), forecasted financial statements ("Exhibit C-5"), the Financial Services Agreement, which is supplemental information for Exhibit C-6 ("Exhibit C-6 Supplement") and the three-page Second Supplemental Information to Exhibit C-6, filed under seal on July 11, 2002 ("Second Supplemental Information to Exhibit C-6"). Vectren Source submitted the requested information; however, Vectren Source asserted that the documents contain competitively sensitive and highly proprietary business financial information, which require confidential treatment and thus moved the Commission to maintain the confidential nature of these documents and the information contained therein, and to

protect the documents from public disclosure. Consequently, on July 14, 2003, the Attorney Examiner granted the Motion for six months from the date of the Attorney Examiner's Entry. Thus, Vectren Source's Protective Order will expire on January 14, 2004. Despite the expiration of the Protective Order, Vectren Source maintains that the information contained in Exhibits C-3, C-4, C-5, C-6 Supplement and Second Supplemental Information to Exhibit C-6, contain competitively sensitive and highly proprietary business financial information, which warrants the same confidential treatment granted in the original Motion for Protective Order.

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 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-3, C-4, C-5, C-6 Supplement and Second Supplemental Information to Exhibit C-6, as Section 4929.23(A), R.C., specifically permits the Commission to grant confidentiality to competitive information.¹ Sections 4901.12 and 4905.07, R.C.,

¹ Section 4929.23(A) 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."

facilitate the protection of trade secrets in the Commission's possession.² 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.³ 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 continue to have full access to the requested information to verify its original certification.

The documents and information contained in Exhibits C-3, C-4, C-5, C-6 Supplement and Second Supplemental Information to Exhibit C-6 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) is as follows:

"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 Section 4901.12 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 proceedings of the public utilities commission and all documents and records in its possession are public records."

Section 4905.07 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."

³ Section 149.43(A)(1)(v) provides in part: "'Public record' does not mean records the release of which is prohibited by state or federal law."

(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 statements, financial arrangements, and forecasted financial statements contain proprietary data and are confidential. Public disclosure of this information would jeopardize Vectren Source's business position in negotiations with other parties and its ability to compete. Vectren Source asserts that this information is not generally known by the public and is held in confidence in the normal course of business. Therefore, Vectren Source reasonably requests that the financial information contained in Exhibits C-3 Financial Statements, C-4 Financial Arrangements, C-5 Forecasted Financial Arrangements, the Financial Services Agreement, which is supplemental information for Exhibit C-6 and the three-page Second Supplemental Information to Exhibit C-6, filed under seal on July 11, 2002, be deemed to contain trade secrets, and thus, be treated as confidential by this Commission and its Staff.

WHEREFORE, given the highly confidential and proprietary nature of the contents of the information filed under seal, Vectren Source urges the Commission to grant this Motion and issue an appropriate Order to ensure the continued non-disclosure of these proprietary materials.

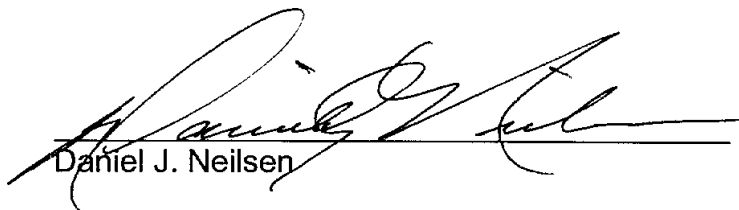
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dneilsen@mwncmh.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Extension of Commission's Protective Order* was served upon the following parties of record this 2nd day of December 2003, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.



Daniel J. Neilsen

Kimberly W. Bojko
Ohio Consumers' Counsel
Assistant Consumers Counsel
10 West Broad Street, 18th Floor
Columbus, OH 43215