STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF SOUTHERN INDIANA GAS AND ELECTRIC COMPANY D/B/A VECTREN ENERGY DELIVERY OF INDIANA, INC. ("VECTREN SOUTH") FOR APPROVAL OF A CHANGE IN ITS FUEL COST ADJUSTMENT FOR ELECTRIC SERVICE IN ACCORDANCE WITH THE ORDER OF THE COMMISSION IN CAUSE NO. 37712 EFFECTIVE JUNE 18, 1986 AND SENATE BILL NO. 529 EFFECTIVE APRIL 11, 1979	)	CAUSE NO. 38708 FAC 91 S1 APPROVED: MAR 07 2012

ORDER OF THE COMMISSION

Presiding Officers:
Larry S. Landis, Commissioner
David E. Veleta, Administrative Law Judge

On April 27, 2011 the Commission issued its Order in Cause No. 43839 ("Order"), the most recent electric base rate case for Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren South"). The Commission directed Vectren South to request the creation of a sub-docket in the first FAC filing following the effective date of the Order for the purpose of reviewing Vectren South's coal supply activities on a going forward basis. On June 6, 2011 Vectren South requested the creation of this sub-docket in its Petition in Cause No. 38708 FAC91 ("FAC91"). On July 7, 2011 the Commission's Order in FAC91 created this proceeding.

On August 18, 2011, Vectren South prefiled with the Commission its prepared testimony and exhibits constituting its case-in-chief in this cause. Vectren South filed the testimony of Wayne D. Games, Vice President of Power Supply, and Emily Medine, a principal with Energy Ventures Analysis, Inc. On October 28, 2011, the Indiana Office of the Utility Consumer Counselor ("OUCC") filed its testimony of Eric M. Hand and Duane P. Jasheway, both Utility Analysts. On November 9, 2011, Vectren South filed rebuttal testimony of Wayne D. Games and Emily Medine. On November 29, 2011, the Presiding Officers issued a docket entry requesting that Vectren South provide additional information. On November 30, 2011, Vectren South filed its response to the Presiding Officers' November 29, 2011 docket entry.

Pursuant to notice published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the commission, a public hearing was held in this Cause on December 2, 2011 at 10:30 A.M., EST, in Room 224, PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Vectren South and the OUCC appeared by counsel. No members of the general public appeared.

1. **Notice and Jurisdiction.** Due legal and timely notice of the commencement of the public hearing in this Cause was given and published by the Commission as required by law. Vectren South operates a public electric utility and, as such, is subject to the jurisdiction of this Commission as provided in the Public Service Commission Act. The provisions of said Act authorize the Commission to act in this proceeding. The Commission, therefore, has jurisdiction over the parties and the subject matter herein.

2. **Vectren South's Characteristics.** Vectren South is a public corporation organized and existing under the laws of the State of Indiana. Its principal office is located at One Vectren Square in Evansville, Indiana. Vectren South is engaged in rendering electric utility service to the public and owns and operates electric generating plant and distribution system for the production, transmission, delivery and furnishing of this service.

3. **Evidence.**

(a) **Vectren South Case-in-Chief.** Vectren South's witness Games testified on Vectren South's history of coal procurement. Mr. Games testified that for nearly a decade Vectren South has annually purchased about 2.8 million tons from Vectren Fuels under long-term contracts which were re-priced over time and approved by the Commission. He explained that Vectren South has a strong preference for procuring Indiana coal, which the Commission has recognized as a preferred source of supply. Buying Indiana coal assures reliable supply, controls delivery costs, and provides economic development benefits. Mr. Games testified that as the long-term contracts expired at the end of 2008, prevailing Illinois Basin market prices were high as a result of the strong global demand for this coal. He indicated that Vectren South entered into contracts in 2008 with staggered pricing terms to avoid having to enter the market for most of its supply within a limited timeframe. Mr. Games explained that Vectren South has moved to a request for proposal ("RFP") process to procure coal. Mr. Games described in detail Vectren South's current contract portfolio. Due to the economic recession and a drop off in demand in 2009, he explained that Vectren South has reduced deliveries to 85% of the contract volume and entirely eliminated some contractual deliveries.

Mr. Games testified that Vectren South issued a RFP to obtain market pricing for coal deliveries commencing in 2012. He explained that Vectren South received six bids from five suppliers, with Foresight Energy, LLC ("Foresight") as the lowest bidder and Vectren Fuels as the second lowest bidder. Mr. Games outlined the particular terms of the negotiated agreements with each coal supplier, including tonnage, pricing, and future price reopeners. He also indicated that Vectren South had entered into agreements in principle with Foresight and Vectren Fuels for key transactional terms.

Vectren South's witness Medine testified on the state of the coal market, described Vectren South's fuel procurement activities and reviewed the outcome of the 2011 RFP process. She noted that demand for Illinois Basin coal has increased and is projected to continue to grow in the near term, in part because of increased international demand. She also explained that Illinois Basin coal is consumed in plants with scrubbers, so demand for Illinois Basin coals could increase in the short term if operation of non-scrubbed plants is curtailed. Ms. Medine testified that Vectren South conducted a competitive solicitation for its coal requirements in keeping with industry practices. She explained that the bids were evaluated on a quality adjusted delivered price basis. Ms. Medine indicated that Foresight offered Illinois coal on a delivered price basis to the Brown stations, and was the lowest cost bid for 2012 and 2013. The second lowest cost offer in 2012 and 2013 was from Vectren Fuels. Negotiations were conducted with the two lowest priced bidders with a focus on a new contract with Foresight and re-pricing coal under existing contracts with Vectren Fuels. She noted that the risk of prices dropping is much smaller than the risk of prices increasing, and that since bids were received, the forward prices for Illinois Basin coal had risen. Ms. Medine concluded that, based on the process followed and a comparison to market conditions, Vectren South has engaged in a reasonable procurement process.

(b) OUCC's Case-in-Chief. OUCC Utility Analyst Eric Hand testified about his significant industrial experience with RFP procurements in steel products, transportation equipment components, U.S. Defense equipment, engineering services, and information technology (services, equipment, and software). Mr. Hand testified that he has participated from both the issuer and bidder perspectives at multiple stages of the RFP process including preparation, writing, issuance, bid evaluation, winner selection, contract award and post-award compliance.

Mr. Hand testified that it is important to review Vectren South's coal procurement history to analyze the current coal RFP process and develop process improvements for future coal procurements. Mr. Hand stated that Vectren South has effectively sole-sourced its coal supply and has relied on its affiliate Vectren Fuels for nearly all its coal requirements for over ten (10) years. He stated that this historical pattern would set a precedent for other coal suppliers and would create a business environment in which prospective bidders may be reluctant to bid because of a perception of a predetermined outcome. In addition, Mr. Hand stated that potential bidders would be concerned about providing sensitive or confidential bid information to a competitor, Vectren Fuels, an affiliate of Vectren South.

Mr. Hand testified about Vectren South's poor planning process, which resulted in all of its coal contracts expiring at the same time; Vectren South thus had to replace its entire coal supply at a time when coal market prices were peaking. Mr. Hand testified that August 2008 was a terrible month to be a coal buyer and a great month to be a coal seller. He stated that Vectren South awarded multiple-year coal contracts for nearly all of its annual coal requirements to Vectren Fuels at near historical high market prices, instead of choosing to temporarily acquire basic coal requirements on the spot market or through 1-year contracts while waiting for coal market prices to stabilize.

Mr. Hand testified that market pricing information, such as Ms. Medine's Exhibit 12, showed significant abnormal and temporary price spiking around the timing of the August 2008 RFP and subsequent contract awards. Mr. Hand testified that experienced purchasers would or should have known that market prices would likely decline in the near future, which in fact they did. Mr. Hand testified that if Vectren South had been an independent company separate from Vectren and Vectren Fuels, it would never have contracted on a multi-year basis for full annual coal requirements at a time when market prices for coal were at near-record highs. Mr. Hand testified that due to the affiliate structure of Vectren, and Vectren South's regulated monopoly status, Vectren and Vectren Fuels stood to benefit greatly from these contracts. In addition, Vectren South would not be harmed by contracting from Vectren Fuels for large quantities of very expensive coal for multiple years. Vectren Corporation

("Vectren") and Vectren Fuels therefore stood to make multiple years of high profits through the contracts with Vectren South, the costs of which would be fully recovered from Vectren South's customers through the FAC.

Mr. Hand testified that Vectren South used statistics to create a perception of competitiveness for the 2008 RFP by citing nine (9) small tonnage contract purchases by other Indiana utilities (with an average weight of 49,000 tons). Vectren South compared those to its multi-year, 3 million tons/year contracts with its affiliate Vectren Fuels, negotiated at a price range that was the highest in 5 years. Mr. Hand stated that he still had concerns with the 2011 RFP and future Vectren South coal procurements, since the affiliate relationships and inherent conflicts of interest between Vectren South, Vectren Fuels, and Vectren still exist. Mr. Hand believes the current affiliate relationship between the companies will continue to impact Vectren South's coal procurement strategy to the benefit of Vectren Fuels and the detriment of Vectren South's customers.

Mr. Hand testified about his concerns regarding the affiliate relationships within the Vectren organization. Mr. Hand expressed his concern regarding the perception of the inherent advantage an affiliate would have in the bid process, by virtue of its potential access to inside information that would not be known by, or accessible to, non-affiliated parties. Mr. Hand also testified about motivations and potential conflicts of interest between the affiliates, and the resultant adverse impact to Vectren South's customers. Mr. Hand stated that Vectren Fuels wants to sell its coal assets at the highest price possible, but this is at odds with Vectren South's obligation under Indiana Code § 8-1-2-42(d) to make "... every reasonable effort to acquire fuel and generate or purchase power or both so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible." Mr. Hand also testified that Vectren is interested in making the highest profits possible for its shareholders, so it financially supports Vectren Fuels. At the same time, however, Vectren is also legally responsible for Vectren South's compliance with Indiana Code § 8-1-2-42(d).

Mr. Hand testified that the Vectren affiliate relationships and internal business transactions create conflicts of interests which have increased costs borne by Vectren South's customers. In Mr. Hand's opinion, Vectren South would not have locked in so much coal during adverse market conditions if not for the fact that its parent corporation stood to benefit through Vectren Fuel's profits. Vectren South's ability to recoup the resultant higher costs from its electric customers provided significant financial gain to Vectren Fuels and Vectren at the expense of the electric utility's (Vectren South's) customers.

Mr. Hand concluded that the 2011 RFP did result in a new low bidder and lower prices for a portion of Vectren South's total annual requirements, but it is unknown whether the progress made in this case will continue or whether Vectren South will revert to its old ways. Mr. Hand stated that Vectren South must continue to look for ways to improve upon its April 2011 coal RFP and must decide to do the right thing for the ratepayers in Southwest Indiana and make "every reasonable effort to acquire fuel and generate or purchase power or both so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible" as required by law. Mr. Hand stated that if improvement does not continue, he recommends that the Commission consider a cap on affiliate sourcing, require an independent third party for coal procurement, or limit the amount of fuel cost recovery for affiliate transactions. Finally, Mr. Hand recommended the Commission require Vectren South to make a similar filing in 2012 for its future 2012 fuel procurement to assist the Commission in determining if Vectren South is continuing to improve its coal procurement practices.

OUCC Utility Analyst Duane Jasheway provided a historical perspective of coal prices for the last few years, the impact on this Cause, and an analysis of Vectren's cost of coal compared with other investor-owned utilities using data from SNL Financial ("SNL") information service.

Mr. Jasheway testified that coal prices rose in 2007 and peaked in 2008 because of global demand, a decreasing United States Dollar, regional supply issues, and escalating freight rates. At the same time that coal prices were peaking, Vectren made the decision to change the pricing of its coal contracts from a cost-based pricing to a market-based pricing, a factor considered by the Commission when it established this sub-docket.

Based on SNL data, Mr. Jasheway prepared a comparative analysis of Indiana's five investor-owned utilities ("IOUs") (Duke Energy Indiana, Indiana Michigan, Indianapolis Power and Light, NIPSCO, and Vectren South) and Louisville Gas and Electric to show coal purchase prices by power plant, by utility, on a weighted average price per MMBtu ($/MMBtu) basis for the period 2006 through 2010.

Based on his analysis, Mr. Jasheway stated that Vectren South's annual average coal purchase prices ($/MMBtu) for 2006 and 2007 were the 4th lowest of the 6 IOUs he analyzed. In 2008, Vectren South's annual average coal purchase prices ($/MMBtu) were the 3rd lowest of the six utilities he compared. Mr. Jasheway testified that after Vectren South switched to market based pricing at the beginning of 2009, Vectren South's cost of coal became the most expensive among the six utilities he compared during the years 2009 and 2010. He stated that Vectren South's cost of coal on average was a $1.00 higher on a $/MMBtu basis than Indianapolis Power and Light's average cost of coal in 2009.

Mr. Jasheway testified that the OUCC's concerns regarding Vectren South's coal costs caused by its affiliate relationship with Vectren Fuels still remain. Mr. Jasheway testified that the OUCC recommends that the Commission continue to carefully monitor and scrutinize Vectren South's coal procurement practices. He stated the most recent coal RFP process initiated by Vectren South since the time the OUCC raised concerns shows signs of improvement, but the situation warrants continued monitoring at least in the near term due to Vectren South's recent coal costs and its affiliate relationships with Vectren Fuels, its principal coal provider.

(c) Vectren South's Rebuttal. In his rebuttal testimony, Vectren South witness Games noted that the OUCC's testimony identified no deficiencies with respect to the terms, including price, of Vectren South's new or re-priced coal contracts. He noted that the only issue raised by the OUCC with respect to the 2011 RFP procurement process was the suggestion that a pre-screening assessment of potential bidders should have taken place prior to the issuance of the RFP. He reaffirmed that Vectren South's procurement was conducted in a non-discriminatory manner. Mr. Games explained proactive steps to reduce deliveries from Vectren Fuels, including an option to take only 85% of contract volumes, cancellation of 1 million tons to A.B. Brown in 2011, and cancellation of over 2 million tons from Vectren Fuels under the A.B. Brown and F.B. Culley contracts in 2012. He summarized the 2011 RFP as highly competitive with multiple bidders, including three of the largest third party Illinois Basin producers (representing about 35% of Illinois Basin production). Mr. Games also explained that agreements in principle with Foresight and Vectren Fuels were finalized and executed. Based on the 2011 RFP process, Vectren South will begin receiving lower cost coal on July 1, 2012. Addressing recommendations made by the OUCC, he noted that the circumstances for the suggestions were hypothetical and should not occur due to Vectren South's Affiliate Guidelines. Mr. Games concluded that Vectren South had satisfied the purpose of the sub-docket and keeping it open was unnecessary.

Ms. Medine testified in her rebuttal testimony that she was pleased that the OUCC recognized the April 2011 RFP yielded positive results, and that no advantage was provided to Vectren Fuels. She also reiterated previous testimony showing that, at the time Vectren South solicited coal in 2008, the future coal market conditions were unknown and the resulting purchases were competitive with the prevailing market. Finally, Ms. Medine testified that the OUCC's possible recommendations for future actions to remediate issues with the procurement processes were premature in light of the highly competitive 2011 RFP conducted by Vectren South. According to Ms. Medine, the 2011 procurement process was fair, followed best practices and yielded good results. She also noted some specific problems with respect to each OUCC recommendation.

(d) **Evidentiary Hearing.** At the evidentiary hearing the OUCC submitted into the record Vectren South's response to the OUCC's second data request, which included a request related to Ms. Medine's concerns about the OUCC's potential procurement recommendations. She noted that the recommendations were hypothetical and designed to address a problem which did not exist. Addressing the OUCC's suggestion of a cap on purchases from Vectren Fuels, Ms. Medine testified that it lacked specifics and questioned whether such a cap would apply if Vectren Fuels were the low bidder. She noted that had such a cap been in place in 2008 or 2011, the cost of fuel most likely would have been higher and further would have interfered with Vectren South's ability to primarily buy Indiana coal. As to other recommendations, Ms. Medine commented that procurement contracts involve more than just terms relating to price and tonnage. For example, she noted that in negotiations with Foresight the market reopener provisions were just as important as either initial price or annual volume.

4. Commission Findings on Coal Supply Activities. As part of Vectren South's base rate case in Cause No. 43839, the Commission reviewed evidence related to Vectren South's 2008 RFP and the resulting supply contracts. While we found there was no basis to order Vectren South to renegotiate the resulting contracts, we expressed concern that circumstances had led to the need to replace all of the utility's coal supply contracts at the same time. We recognized that Vectren South's new contracts contained staggered price terms designed to create a portfolio to avoid a reoccurrence of such circumstances. This sub-docket was opened to review Vectren South's procurement practices on a going forward basis. Vectren South has submitted evidence for our review related to its 2011 competitive RFP process, bid evaluation, and resulting supply arrangements.

(a) **The RFP Process.** In anticipation of the need to obtain incremental supply for 2012 and beyond, Vectren South issued an RFP in April of 2011 soliciting bids for up to 500,000 tons of coal for a four (4) year period commencing July 1, 2012. The RFP was sent to 26 Illinois Basin producers and was publicized in trade publications. Vectren South employed Emily Medine of Energy Venture Analysis, Inc. to assist in the preparation and distribution of the RFP. Ms. Medine played an active role in discussions and negotiations with the two low bidders.

In response to its RFP, Vectren South received bids from five suppliers. Ms. Medine confirmed that the 2011 procurement process followed recognized industry practices. OUCC witness Hand acknowledged the progress Vectren South had made in its 2011 RFP as compared to its 2008 procurement process.

We note that following a recognized industry practice does not, by itself, fully address the issues raised in this sub-docket. While we are cautiously encouraged by the steps Vectren South has undertaken in the 2011 procurement process, the public interest requires sustained oversight, especially regarding affiliate transactions. The Commission has indicated that utilities should make reasonable efforts to mitigate fuel price volatility. This includes a program that works to mitigate fuel price volatility and considers market conditions and the price of fuel on a current and forward-looking basis. Accordingly, and as discussed further below, we will utilize the FAC process as the means for such oversight.

(b) The RFP Evaluation and the New and Re-Priced Contracts. With the guidance of Ms. Medine, Vectren South evaluated the terms of the bids it received and, based on the evaluation, entered into negotiations with the two low bidders – Foresight Coal and Vectren Fuels. Ms. Medine's bid evaluation considered all aspects of the prices offered, including delivery charges, coal heat content, sulphur content and contract volume optionality. The subsequent negotiations covered contract terms, price, price certainty, price re-negotiation process, volume optionality, and coal quality specifications. Based on Ms. Medine's advice, Vectren South focused on clarifying the terms of the future price re-negotiation process with Foresight, and sought additional price concessions from Vectren Fuels as part of the price re-opener negotiations under its existing contracts. At the conclusion of negotiations with these bidders, Ms. Medine compared the proposed contract prices to the ICAP United forward price curve for Illinois Basin coal, as well as historic and current price trends in the Illinois Basin. Ms. Medine concluded that the contract prices offered by the two low bidders were competitive with the forward price curve, that market conditions reflected risk of upward price pressure, and therefore the negotiated contracts prices and terms were reasonable.

The Commission's concerns leading to this sub-docket focused on the fact that Vectren South was vulnerable to 2008 market conditions because its supply portfolio lacked staggered contract terms. The OUCC's testimony confirms that the 2011 RFP resulted in lower prices, reopening provisions and a new low bidder. The 2011 RFP process as offered by Vectren South appears to be competitive and market-based. However, one of the key questions is whether the procurement process will continue to provide ongoing opportunities to re-enter the market for new supply versus requiring Vectren South to replace all of its supply within any single year. Equally important is the concern that the process continue to evidence competitive terms and procedures.

(c) The Supply Portfolio Contract Terms. Vectren South's testimony reflects that as a result of its recent contracting, it will have supply re-pricing opportunities in each of the next four years. In aggregate, over 3.5 million tons of coal will come up for re-pricing or replacement over that four year period, which is all of Vectren South's supply. We find this staggering helps to ensure that Vectren South will not be overly exposed to market conditions during a particular year.

(d) **Conclusion.** Based on our review of the evidence related to Vectren South's 2011 procurement process and its results, we find that the process appears successful in terms of obtaining reasonable market prices and ensuring ongoing re-pricing opportunities and portfolio management on a going forward basis. The Commission finds that the 2011 RFP and its resulting contracts are reasonable efforts to acquire fuel so as to provide electricity to retail customers at the lowest fuel cost reasonably possible.

The Commission directed Vectren South to request this sub-docket because Vectren South had placed itself in a position where virtually its entire coal supply was exposed to market prices at one point in time which turned out to have been extremely inopportune. *Southern Indiana Gas and Electric Company*, Cause No. 43839, 2011 Ind. PUC LEXIS 115, *44-49 (IURC April 27, 2011). The result of the 2011 RFP however does not wholly alleviate our concerns with Vectren South's procurement process on a going forward basis. Vectren South must continue to take steps to ensure that the procurement process will provide ongoing opportunities to re-enter the market for new supply. Thus, we find that the OUCC's recommendation that we continue to monitor the procurement process through future FAC proceedings has merit. Further, there is value in moving the presentation of that information forward by using the FAC process and recognizing that, to the extent circumstances warrant, a future sub-docket on the current procurement plan could be initiated.

Therefore, Vectren South shall provide in the testimony of its first quarter FAC filing each calendar year a detailed discussion of its coal procurement plan which provides enough data to enable the OUCC and the Commission to fully understand the coal supply picture for both the current calendar year and the following calendar year. This annual filing requirement does not relieve Vectren South of its statutory obligations in each quarterly FAC proceeding, but is intended to supplement such summary proceedings.

5. Confidential Information. Vectren South filed a Motion for Protection of Confidential and Proprietary Information, which was supported by an affidavit showing documents to be submitted to the Commission were trade secret information within the scope of Indiana Code § 5-14-3-4(a)(4) and Indiana Code § 24-2-3-2. The Presiding Officers issued docket entries and made rulings from the bench finding such information to be preliminarily confidential, after which such information was submitted under seal. We find that all such information is confidential pursuant to Indiana Code § 5-14-3-4 and Indiana Code § 24-2-3-2, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The review of Southern Indiana Gas and Electric Company d/b/a Vectren Energy

Delivery of Indiana, Inc.'s ("Vectren South") coal supply activities has been completed consistent with the findings herein.

2. Vectren South shall provide in the testimony of its first quarter FAC filing each calendar year a detailed discussion of its coal procurement plan which provides enough data to enable the OUCC and the Commission to fully understand the coal supply picture for both the current calendar year and the following calendar year.

3. The Confidential Information submitted under seal in this Cause pursuant to motions for protective orders are determined to be confidential trade secret information as defined in Indiana Code § 24-2-3-2 and therefore exempt from public access and disclosure pursuant to Indiana Code § 5-14-3-4(a)(4).

4. This Order shall be effective on and after the date of its approval.

ATTERHOLT, LANDIS AND ZIEGNER CONCUR; MAYS NOT PARTICIPATING; BENNETT ABSENT:

APPROVED: MAR 07 2012

I hereby certify that the above is a true and correct copy of the Order as approved.

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF SOUTHERN INDIANA GAS AND ELECTRIC COMPANY D/B/A VECTREN ENERGY DELIVERY OF INDIANA, INC. ("VECTREN SOUTH") FOR APPROVAL OF A CHANGE IN ITS FUEL COST ADJUSTMENT FOR ELECTRIC SERVICE IN ACCORDANCE WITH THE ORDER OF THE COMMISSION IN CAUSE NO. 37712 EFFECTIVE JUNE 18, 1986 AND SENATE BILL NO. 529 EFFECTIVE APRIL 11, 1979	)	CAUSE NO. 38708 FAC 91 S1 APPROVED:

CONCURRING OPINION OF COMMISSIONER LARRY S. LANDIS

While I agree fully with the Commission decision in this proceeding, certain aspects of the proceeding warrant further comment. There are two issues here: in plain English, the first is the nature of the relationship between Vectren South and Vectren Fuels; the other relates to management of the RFP process. These comments focus primarily on the former.

In its reply to the proposed order of the OUCC, Vectren South complains that the OUCC looks back to 2008 transactions in commenting on recommendations going forward, specifically addressing the 2011 RFP and going forward.

Vectren South goes on to assert that the OUCC's position "...ignores the fact that for a ten year period through 2008, Vectren South bought the majority of its coal from Vectren Fuels under contract terms that were negotiated and agreed upon with the OUCC," but Vectren South ignores the fact that the nature of the contracts during that period was dramatically different from the contracting approach which ensued in 2008 and subsequently.

In the interest of a balanced perspective, Vectren South and its coal mining affiliate Vectren Fuels historically undertook a symbiotic relationship to foster the development of the Prosperity and Cypress Creek coal mines in Southern Indiana. The pricing between the affiliates was established on a cost-to-produce basis, rather than being set on either the open market or a true bid basis. A set of letter agreements between the OUCC and Vectren South established the pricing and re-pricing process. The pricing for the early years of the 8 and 10 year affiliate contracts was set and that for the later years was established on a formulaic cost-of-service basis.

It is highly doubtful that any third parties could have successfully won the contracts if they bid a market price against Vectren Fuels' cost-to-produce pricing strategy. It is noteworthy that in all likelihood, all parties benefitted from the arrangement. Vectren Fuels benefitted from threshold sales which fostered the mines' development; Vectren South benefitted from low prices; and ratepayers likewise benefitted from favorable pricing. Notably, relief from the formula rates was granted by the Commission in response to Vectren South's request when financial pressure was placed on the Cyprus Creek mine in 2006.

Vectren South's reply to the OUCC is disconcertingly silent when it comes to the significant distinctions between procurement prior to 2008 and the process which prevailed effective with procurement in that year, as Vectren South moved away from the cost-to-produce basis and to a true market request-for-proposal basis. It seems a reasonable argument that the historical process may have created an environment where other bidders elected not to respond competitively, as they viewed no opportunity to secure the business.

The lack of a staggered or laddered contract renewal approach, which created the situation where substantially all of the re-pricing occurred in one fell swoop, appears to reflect a lack of preparation by Vectren South for the shift in pricing construct. While recognizing that Vectren and Vectren Fuels are not under our purview, we are nonetheless dismayed that they did not step forward more forcefully to help their regulated sister utility Vectren South and its customers when the contracts flowing from the 2008 RFP resulted in terms which were significantly out-of-synch with prices which had prevailed under the prior arrangement. When Vectren Fuels was struggling and challenged by the 2006 Cyprus Creek scenario, the Vectren family was quick to ask the Commission to recognize the symbiotic nature of the relationship which then existed, and grant relief. It is disappointing that a comparable spirit was conspicuously absent when Vectren South found itself and its customers struggling and challenged in 2009, 2010 and 2011, and that the latter situation was apparently not viewed with similar urgency within the Vectren family.

Counsel for Vectren South focuses very closely and finely on semantic distinctions in the proposed orders. I urge counsel to become acquainted, or perhaps reacquainted, with Roman history.

In 67 BC, the Roman Emperor Julius Caesar took Pompeia, daughter of Quintus Pompeius Rufus, a son of a former consul, and Cornelia, the daughter of the Roman dictator Lucius Cornelius Sulla, as his second wife. Significantly, in 63 BC Caesar was elected to the position of Pontifex Maximus, the chief priest of the Roman state religion. As a result, he held positions of high trust and visibility, both secular and religious. A year later, a young patrician, dressed as a woman, was successful in gaining access to Pompeia's chambers with the intent of seducing her, only to be caught red-handed. Caesar refused to testify against him at his trial, and he was acquitted, but Caesar later divorced Pompeia, stating that "my wife ought not even to be under suspicion." This gave rise to a proverb, often expressed as: "Caesar's wife must be above suspicion."[1]

Upfront transparency is warranted. Still more directly stated, it is not sufficient in affiliate transactions that the Vectren counterparties adhere to the letter of the law, or even to its spirit. If you are going to seek the benefits of an affiliate transaction, they must be equitably distributed between the

[1] Wikipedia contributors, "Pompeia (wife of Julius Caesar)," *Wikipedia, The Free Encyclopedia*, http://en.wikpedia.org/wiki/Pompeia_(wife_of_Julius_Caesar) *passim*.

public utility and the ratepayers, and demonstrate upfront, openly and proactively that the transaction has been appropriately executed. This is precisely why the OUCC is correct in asserting that the history of the 2008 RFP has continuing relevancy. "Caesar's wife must be above suspicion, or even the hint thereof," precisely because appearances, where one is in a position of high trust and visibility, must be above question if Caesar's wife anticipates going forward with affiliate transactions.