

FILE

6
RECEIVED-DOCKETING DIV
2012 JAN -4 PM 12:09
PUCO

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

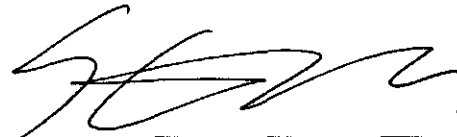
In the Matter of the Certification)
Application of Ecova, Inc. as a) Case No. 11-5954-GA-AGG
Natural Gas Broker / Aggregator)

MOTION FOR PROTECTIVE ORDER

Now comes Ecova, Inc. ("Ecova"), a natural gas broker and aggregator, seeking certification as a Natural Gas Broker / Aggregator, and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C."), moves for a protective order to keep one (1) Exhibit to its application confidential and not part of the public record.

The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the rule cited above, three (3) unredacted copies of the Exhibit to the application for which a protective order is requested are presented under seal.

Respectfully submitted,



Stephen K. Hall
McDonald Hopkins LLC
41 S. High Street, Suite 3550
Columbus, OH 43215
(614) 458-0026 (Telephone)
(614) 458-0028 (Facsimile)
shall@mcdonaldhopkins.com

Attorney for Ecova, Inc.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

{3509702:}

Technician JD Date Processed 01-04-12

**MEMORANDUM IN SUPPORT
OF MOTION FOR PROTECTIVE ORDER**

Ecova requests that the information designated as confidential – Exhibit C-5 (Forecasted Financial Statements) – of its 2011 Application for Certification as a Natural Gas Broker / Aggregator be protected from public disclosure. The information for which protection is sought covers Ecova's financial information and results of operation. Such information, if released to the public, would harm Ecova and its competitive position by providing to its competitors material, confidential and proprietary information regarding what is designed by statute to be a competitive service.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Public Utilities Commission of Ohio (the "Commission") or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

The criteria for what should be kept confidential by the Commission is well established, and the Commission also long ago recognized its statutory obligation to protect trade secrets:

The Commission is of the opinion that the "public records" statute must also be read in pari materia with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982).

Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1-24(A)(7)). The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act: "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, patter, 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) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. § 1333.61(D).

This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion. Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants who will be providing power, through the Uniform Trade Secrets Act. The Commission has previously carried out its obligations in this regard in numerous proceedings. See, e.g., Elyria Tel. Co., Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); OhioBell Tel. Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 7, 1990).

In Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), delineated factors to be considered in recognizing a trade secret:

(1) the 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.

These factors were adopted by the Supreme Court of Ohio in State ex rel. The Plain Dealer v. Ohio Dept. of Ins. (1997), 80 Ohio St.3d 513, 524-525.

Applying these factors to the exhibit to the 2011 Application that Ecova seeks to keep confidential, it is clear that a protective order should be granted. Exhibit C-5 of the Application sets forth Ecova's forecasted financial statements, providing proprietary financial information. This is precisely the type of information which companies go to great lengths to keep private. Knowledge by a competitor of such financial information would be great harm to Ecova's competitive position in the market place. Additionally, public disclosure of this information is not likely to assist the Commission in carrying out its duties under applicable rules. Thus, Exhibit C-5 should be kept under seal.

WHEREFORE, for the above reasons Ecova requests that the Commission grant its motion for a protective order: to maintain Exhibit C-5 of its Application for Certification as a Natural Gas Broker / Aggregator under seal.

Respectfully submitted



Stephen K. Hall
McDonald Hopkins LLC
41 S. High Street, Suite 3550
Columbus, OH 43215
(614) 458-0026 (Telephone)
(614) 458-0028 (Facsimile)
shall@mcdonaldhopkins.com

Attorney for Ecova, Inc.

Filed: January 4TH, 2012

REDACTED
Confidential Addendum Supplement
Ecova, Inc.

TO THE PUBLIC UTILITY COMMISSION OF OHIO - Confidential Addendum Supplement to Ecova, Inc. Broker License Application, Case # 11-5954-GA-AGG, filed on or about December 14, 2011.

C-5 "Forecasted Financial Statements" – The below table describes forecasted financial information for the brokerage service of Ecova, Inc. within the State of Ohio. Forward-looking statements are all statements except those of historical fact including, without limitation, those that are identified by the use of words that include "will," "may," "could," "should," "intends," "plans," "seeks," "anticipates," "estimates," "expects," "forecasts," "projects," "predicts," and similar expressions. Forward-looking statements are subject to a variety of risks and uncertainties and other factors. Many of these factors are beyond our control and they could have a significant effect on our operations, results of operations, financial condition or cash flows. This could cause actual results to differ materially from those anticipated in our statements. Such risks, uncertainties and other factors include, among others:

1. changes in economic conditions impacting client demand or payment for services;
2. disruption to information systems, automated controls and other technologies that we rely on for operations, communications and customer service;
3. changes in, and compliance with, laws, regulations, decisions, rules and policies;
4. natural disasters that can disrupt energy generation, transmission and distribution, as well as the availability and costs of materials, equipment, supplies and support services;
5. the loss of key suppliers for materials or services;
6. the potential for terrorist attacks, cyber security attacks or other malicious acts, that cause damage to our utility assets, as well as the national economy in general; including the impact of acts of terrorism or vandalism that damage or disrupt information technology systems;
7. changes in industrial, commercial and retail growth and demographic patterns in our service territory or the loss of significant customers;
8. deterioration in the creditworthiness of our customers and counterparties;
9. the effect of any potential decline in our credit ratings, including impeded access to capital markets and higher interest costs;
10. increasing health care costs and the resulting effect on health insurance provided to our employees;
11. increasing costs of insurance, more restricted coverage terms and our ability to obtain insurance;
12. work force issues, including changes in collective bargaining unit agreements, strikes, work stoppages or the loss of key executives, availability of workers in a variety of skill areas, and our ability to recruit and retain employees;
13. the potential effects of negative publicity regarding business practices, whether true or not, which could result in, among other things, costly litigation;
14. changes in technologies, possibly making some of the current technology obsolete
15. changes in tax rates and/or policies; and
16. changes in our strategic business plans, which may be affected by any or all of the foregoing, including the entry into new businesses and/or the exit from existing businesses.

Our expectations, beliefs and projections are expressed in good faith. We believe they are reasonable based on, without limitation, an examination of historical operating trends, our records and other information available from third parties. However, there can be no assurance that our expectations, beliefs or projections will be achieved or accomplished. Furthermore, any forward-looking statement speaks only as of the date on which such statement is made. We undertake no obligation to update any forward-looking statement or statements to reflect events or circumstances that occur after the date on which such statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict all such factors, nor can we assess the effect of each such factor on our business or the extent that any such factor or combination of factors may cause actual results to differ materially from those contained in any forward-looking statement.

If the Commission has questions about this information it may contact Ann Wilson, Corporate Controller, for Ecova, Inc. at (509) 329-7041 or by mail at 1313 N. Atlantic St., Suite 5000, Spokane, WA 99201.