

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On December 14, 2011, Ecova, Inc. (Ecova or company) filed an application for certification as a competitive retail natural gas aggregator/broker. On January 4, 2012, Ecova filed a motion for a protective order, pursuant to Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), requesting that exhibit C-5 of its application be kept under seal. This exhibit contains the company's forecasted financial statements for 2012 and 2013.
- (2) In support of its motion for a protective order, Ecova explains that exhibit C-5 contains competitively sensitive and highly proprietary business financial information which is not generally known or available to the general public. Therefore, Ecova requests that the information found in exhibit C-5 be treated as confidential.
- (3) 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* (2000), 89 Ohio St.3d 396, 399.
- (4) Similarly, Rule 4901-1-24, 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."

- (5) 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.
- (6) The attorney examiner has examined the information covered by the motion for protective order filed by Ecova, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in exhibit C-5 of Ecova's application constitutes trade secret information. Release of this document is, therefore, prohibited under state law. The attorney examiner also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Finally, the attorney examiner concludes that this document could not be reasonably redacted to remove the confidential information contained therein. Accordingly, the attorney examiner finds that Ecova's motion for protective order is reasonable with regard to exhibit C-5 filed on January 4, 2012; therefore, the motion should be granted.
- (7) 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 attorney examiner finds that the 24-month provision in Rule 4901-1-24(D)(4), O.A.C., is intended to synchronize the expiration of protective orders related to gas marketers' certification applications with the expiration of their certification and that the expiration dates should allow adequate time for consideration of any motion for extension.

¹ See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, (1997) 80 Ohio St.3d 513, 524-525.

Therefore, confidential treatment shall be afforded to exhibit C-5 for a period ending 24 months from the effective date of the certificate issued to Ecova, or until January 14, 2014. Until that date, the docketing division should maintain, under seal, exhibit C-5, which was filed under seal in this docket on January 4, 2012.

- (8) Rule 4901-1-24(F), O.A.C., requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Ecova wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to Ecova.

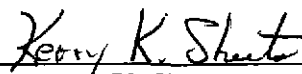
It is, therefore,

ORDERED, That the motion for protective order filed by Ecova be granted with regard to the information contained in exhibit C-5 of Ecova's application. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the unredacted exhibit C-5, which was filed under seal in this docket on January 4, 2012, for a period of 24 months, ending on January 14, 2014. It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Kerry K. Sheets
Attorney Examiner


J. Vrm

Entered in the Journal
MAY 16 2012


Barcy F. McNeal

Barcy F. McNeal
Secretary