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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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**MOTION FOR PROTECTIVE ORDER AND FOR EXTENSION OF  
AN EXISTING PROTECTIVE ORDER**

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Now comes Ecova, Inc. ("Ecova"), a natural gas aggregator/broker, seeking renewal of its certification as an Aggregator/Broker, and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, moves for a protective order to keep two (2) exhibits to its renewal certification application ("2013 Renewal Application") confidential and not part of the public record.

In addition, Ecova respectfully moves for an extension of the protective order previously issued in this proceeding on May 16, 2012 to keep one (1) exhibit to its original certification application ("2011 Original Application") confidential and not part of the public record. If not renewed, this protective order will expire on January 14, 2014.

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 2013 Renewal Application for which a protective order is requested are presented under seal. Three (3) unredacted copies of the exhibit to the 2011 Original Application are already on file with the Commission, and are being kept under seal by the Commission's docketing division,

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pursuant to the Attorney Examiner's May 16, 2012 Entry in this case.

Respectfully submitted,



11/15/2013

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

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Ecova, Inc. ("Ecova") requests that the information designated as confidential – Exhibits C-3 (Financial Statements) and C-5 (Forecasted Financial Statements) – in its 2013 Application for renewal of its certification as a Competitive Retail Natural Gas Aggregator/Broker 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.

Ecova also requests that the existing protective order for the confidential information - Exhibit C-5 (Forecasted Financial Statements) of its 2011 Original Application for certification be renewed for a term coinciding with the term of the protective order requested for the confidential information that Ecova has submitted with its 2013 Renewal Application certification.

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.

House Bill 9 of the 124<sup>th</sup> General Assembly, which established the statutory requirement for gas providers to be certified by the Commission, recognized that some of the information that the Commission would have to review in order to determine whether a natural gas provider had the operational experience and financial wherewithal to conduct business would be proprietary in

nature. Thus, Section 4929.23 of the Revised Code provides in part that "[t]he Commission shall take such measures as it considers necessary to protect the confidentiality of any such information."

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.

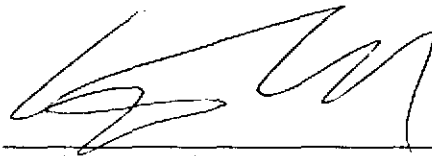
These factors were adopted by the Supreme Court of Ohio in *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.* (1997), 80 Ohio St.3d 513, 524-525.

Applying these factors to the two (2) exhibits to the 2013 Renewal Application that Ecova seeks to keep confidential and to the exhibit to the 2011 Original Application that is already the subject of a protective order, it is clear that a protective order for both the 2013 Renewal Application exhibits and the exhibit already subject to the May 16, 2012 protective order should be granted. Exhibit C-3 of the 2013 Renewal Application sets forth Ecova's financial statements, providing in detail Ecova's confidential results of operations, balance sheet data, and cash flows

information. Exhibit C-5 of the 2013 Renewal Application (and the 2011 Original Application) provides similar financial information on a forecasted basis. Thus, each of Exhibits C-3 (for the renewal certification application) and C-5 (for both the original and the renewal certification application) should be kept under seal.

Accordingly, for the reasons set forth above, Ecova requests that the Commission grant its motion for a protective order to (1) maintain Exhibits C-3 and C-5 of its 2013 Renewal Application for certification as a Competitive Retail Electric Natural Gas Aggregator/Broker under seal; and to (2) extend the protective treatment previously allowed by the Entry issued in this proceeding on May 16, 2012, to maintain C-5 of Ecova's 2011 Original Application for certification under seal.

Respectfully submitted,



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