

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 November 15, 2013, Ecova, Inc. (Ecova or company) filed an application for renewal of its certification as a competitive retail natural gas aggregator/broker. On that same day, Ecova filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), requesting that exhibits C-3 (financial statements) and C-5 (forecasted financial statements) of its renewal application be kept under seal.
- (2) Pursuant to Ohio Adm.Code 4901-1-24(F), Ecova also requested in its motion that the existing protective order for the confidential information in its 2011 original certification application, exhibit C-5 (forecasted financial statements), be renewed for a term coinciding with the term of the protective order for confidential exhibits C-3 and C-5 that were submitted with its 2013 renewal application. Ecova asserts that the information protected in that C-5 exhibit continues to be competitively sensitive and proprietary business financial information.
- (3) In support of its current motion for a protective order, Ecova explains that exhibits C-3 and C-5 of its 2013 renewal application contain 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 exhibits C-3 and C-5 be treated as confidential.
- (4) R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of R.C. Title 49. R.C. 149.43, 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*, 89 Ohio St.3d 396, 399, 732 N.E. 2d 373 (2000).

- (5) Similarly, Ohio Adm.Code 4901-1-24, 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.”
- (6) 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.” R.C. 1333.61(D).
- (7) 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 R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court,¹ the attorney examiner finds that the information contained in exhibits C-3 and C-5 of Ecova’s 2013 renewal application constitutes trade secret information. Release of these documents 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 these documents 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 exhibits C-3

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

and C-5 filed on November 15, 2013; therefore, the motion should be granted.

- (8) With regard to Ecova's request to extend the protective order for its previously submitted forecasted financial statements, the attorney examiner finds that exhibit C-5 of Ecova's 2011 original application still constitutes trade secret information. Therefore, the attorney examiner finds that Ecova's request to extend the protective order with respect to exhibit C-5 of its 2011 original application is reasonable and should be granted.
- (9) Ohio Adm.Code 4901-1-24(D)(4), 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 Ohio Adm.Code 4901-1-24(D)(4), 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. Therefore, confidential treatment shall be afforded to exhibits C-3 and C-5 for a period ending 24 months from the effective date of the certificate issued to Ecova, or until January 15, 2016. Until that date, the docketing division should maintain, under seal, exhibits C-3 and C-5, which were filed under seal in this docket on November 15, 2013, and exhibit C-5 of Ecova's 2011 original certification application, which was filed under seal in this docket on January 4, 2012.
- (10) Ohio Adm.Code 4901-1-24(F), 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 a protective order filed by Ecova be granted with regard to the information contained in exhibits C-3 and C-5 of Ecova's 2013 renewal application. It is, further,

ORDERED, That Ecova's request to extend the protective order with respect to exhibit C-5 of its 2011 original application be granted. It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, the un-redacted exhibits C-3 and C-5, which were filed under seal in this docket on November 15, 2013, for a period of 24 months, ending on January 15, 2016. It is, further,

ORDERED, That the Commission's docketing division continue to maintain, under seal, the un-redacted exhibit C-5, which was filed under seal in this docket on January 4, 2012, for a period of 24 months, ending on January 15, 2016. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ Kerry K. Sheets

By: Kerry K. Sheets
Attorney Examiner

jrj/vrm

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in

Case No(s). 11-5954-GA-AGG

Summary: Attorney Examiner Entry ordering that the motion for a protective order filed by Ecova be granted with regard to the information contained in exhibits C-3 and C-5 of Ecova's 2013 renewal application. The entry also grants Ecova's request to extend the protective order with respect to exhibit C-5 of its 2011 original application. Further, The entry directs Commission's docketing division to keep the exhibits under seal for a period of 24 months; electronically filed by Vesta R Miller on behalf of Kerry K. Sheets, Attorney Examiner, Public Utilities Commission of Ohio