

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of)	
Vadata, Inc. and Ohio Power Company for)	Case No. 17-1827-EL-AEC
Approval of a Unique Economic)	
Development Arrangement for Ohio Data)	
Center Campuses)	

**MOTION TO EXTEND PROTECTIVE ORDER FILED BY VADATA, INC., NOW
KNOWN AS AMAZON DATA SERVICES, INC.**

On January 9, 2018, the Public Utilities Commission of Ohio (the “Commission”) granted the motions for protective order¹ filed by Vadata, Inc., now known as Amazon Data Services, Inc. (“ADS”), and the Office of the Ohio Consumers’ Counsel (“OCC”). The motions for protective order sought to keep confidential certain information contained in the Joint Application for a Unique Economic Development Arrangement (the “Joint Application”), in the direct testimony filed by ADS witness Charles Daitch, and in the direct testimony of witness Michael Haugh, filed by OCC. On November 22, 2019, ADS filed a motion to extend the protective order to keep this information confidential and under seal. On January 7, 2020, the Commission granted ADS’s extension motion for an additional twenty-four months, until January 7, 2022.

As the Commission previously found, the information about ADS’s operation and financial data, actual and potential investment levels, electric use and pricing information and employment figures and plans related to the development of its Ohio campuses, constitutes trade secret information under Ohio law. ADS has not shared this trade secret information with the general public, and it continues to take steps to prevent the disclosure of this information. ADS would be at a competitive disadvantage against its competitors and in the marketplace worldwide

¹ Filed September 1, 2017, September 22, 2017, and November 7, 2017.

if this trade secret information becomes publicly available. Disclosure of the confidential information could result in misuse of this confidential, proprietary, and trade secret information.

Therefore, pursuant to Rule 4901-1-24(F) of the Ohio Administrative Code, ADS respectfully moves to extend the protective order and keep the information that is subject to that protective order confidential and under seal, for an additional twenty-four months (*i.e.*, until January 7, 2024), for the reasons stated above and in the accompanying memorandum in support.

Dated: November 19, 2021

Respectfully submitted,

/s/ David F. Proaño

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**MEMORANDUM IN SUPPORT OF MOTION TO EXTEND PROTECTIVE ORDER
FILED BY VADATA, INC., NOW KNOWN AS AMAZON DATA SERVICES, INC.**

Vadata, Inc., now known as Amazon Data Services, Inc. (“ADS”), respectfully seeks an extension of the protective order entered by the Public Utilities Commission of Ohio (the “Commission”) in the above-captioned case on January 9, 2018 and extended on January 7, 2020. Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code and the Commission’s prior findings, certain information filed in this matter contained confidential trade secret information that should not be publicly disclosed pursuant to Ohio law that protects such information. Because this information remains proprietary, confidential, and subject to Ohio law for the protection of trade secrets, the Commission’s protective order should be extended for another twenty-four months, until January 7, 2024.

PROCEDURAL BACKGROUND

On September 1, 2017, ADS commenced the above-captioned case by filing a Joint Application for a Unique Economic Development Arrangement (“Joint Application”). ADS is an affiliate of Amazon Web Services, Inc. (“AWS”), which is a wholly owned subsidiary and operating segment of Amazon.com, Inc. (“Amazon”).

ADS committed to invest hundreds of millions of dollars over a number of years in Ohio to acquire and develop three properties as campuses (“Ohio Campuses”) in Dublin, Hilliard, and

New Albany capable of accommodating up to fifteen total cloud computing data centers (“Ohio Data Centers”).

The Joint Application contained confidential, sensitive, and proprietary operational and financial data, actual and potential investment levels, electric use and pricing information, and employment figures and plans, that constitute trade secret information subject to protection from public disclosure by Ohio law. Accordingly, concurrent with the filing of the Joint Application, on September 1, 2017, ADS filed a motion for protective order to maintain under seal and confidential that trade secret information.

On September 22, 2017, OCC filed comments regarding the Joint Application and also filed a motion for protective order. In the motion, OCC stated that, as part of discovery in this proceeding, it received information from ADS subject to an executed protective agreement. OCC stated that ADS communicated that the information subject to the protective agreement is proprietary and confidential, constitutes trade secrets under Ohio law, and that non-disclosure is not inconsistent with the purposes of Title 49 of the Revised Code. While not conceding that the information ADS sought to protect constituted trade secrets, out of an abundance of caution, OCC requested that the Commission protect information contained in limited portions of its public comments.

On November 7, 2017, ADS and OCC also filed motions for protective order with regard to the testimony provided by ADS witness Charles Daitch and OCC witness Michael Haugh, portions of which contained trade secret information subject to protection under Ohio law. No memoranda contra to the four motions for protective order filed by ADS and OCC were filed by any party. On January 9, 2018, the Commission entered an Order finding the information that was the subject of the motions for protective order filed by ADS and OCC constituted trade

secrets subject to protection from public disclosure under Ohio law. Specifically, the Commission found that “the information subject to the motions for protective order constitute trade secrets and, therefore, their release is prohibited under state law.” (January 9, 2018 Protective Order, ¶ 11.) The Commission also held, consistent with Ohio Adm.Code 4901-1-24(D), that confidential treatment of that trade secret information should be afforded for a period ending twenty-four months after entry of the order, and that until such date the Commission’s docketing division should maintain, under seal, all information filed confidentially by ADS and OCC.

ADS respectfully seeks an additional twenty-four-month extension of the protective order, until January 7, 2024, because the confidential information continues to constitute highly sensitive trade secret information protected from public disclosure by Ohio law. As described below, the confidential information contained in the Joint Application and related testimony, if released to the public, would harm ADS by providing its domestic and international competitors with proprietary information concerning its operations, investment projections, electric use and pricing information, and employment figures and plans at the Ohio Campuses.

LAW AND ARGUMENT

I. Legal Standard

The confidential information should remain confidential and protected from public disclosure because, as the Commission previously held, the information satisfies the requirements of Ohio Adm.Code 4901-1-24 and constitutes trade secrets under Ohio law and continues to remain trade secret information.

Ohio Adm.Code 4901-1-24(D) provides that the Commission may issue any order “which is necessary to protect the confidentiality of information contained in the document, to

the extent that state or federal law prohibits release of the information, including where the information is deemed by the commission, the legal director, the deputy legal director, or the attorney examiner to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

Section 1333.61(D) of the Revised Code defines “trade secret” as:

[I]nformation, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, 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).

The Ohio Supreme Court has also identified six factors to consider when determining if information constitutes trade secrets:

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.

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

With respect to the extension of the protective order, Ohio Adm.Code 4901-1-24 provides, “A party wishing to extend a protective order beyond twenty-four months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure.” This motion meets those requirements.

II. Analysis

The Commission reviewed Section 1333.61(D) and the *Plain Dealer* factors in its January 9, 2018 protective order and found:

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), as well as the six-factor test set forth by the Ohio Supreme Court, the attorney examiner finds the information subject to the motions for protective order constitute trade secrets and, therefore, their release is prohibited under state law.

(January 9, 2018 Protective Order, ¶ 11.) Based on this finding, the Commission granted the motions for protective order. (*Id.* ¶¶ 15-17.) The information redacted in the Joint Application, including the report attached as Appendix B thereto, and related direct testimony of ADS witness Charles Daitch and OCC witness Michael Haugh, contain information regarding ADS’s operational and financial data, actual and potential investment levels, electric use and pricing information, and employment figures and plans. This information constitutes “business information” and “financial information” under Section 1333.61(D), and derives independent economic value from not being generally known to the public. Ohio courts routinely find that similar information constitutes trade secrets. *See, e.g., Ohio Consumers’ Counsel v. Pub. Util. Comm’n*, 112 Ohio St.3d 362, 2009-Ohio-604, 904 N.E.2d 853, ¶ 28 (information about electricity use and pricing); *Plain Dealer v. Ohio Dep’t. of Ins.*, 80 Ohio St.3d 513, 1997-Ohio-75, 687 N.E.2d

661, ¶ 24 (investment information); *Boehm v. Black Diamond Casino Events, LLC*, 116 N.E.3d 704, 2018-Ohio-2379, at ¶¶ 5-6 (1st Dist.) (operational and financial data).

ADS continues to take all reasonable precautions to guard the information's secrecy. Such steps include, without limitation, entering into confidentiality agreements with persons receiving this trade secret information, keeping such trade secret information inaccessible to the public, and protecting any trade secret information from public disclosure. Similarly, the value to ADS of keeping this information confidential, and the potential competitive advantage that ADS's competitors could obtain through this information, has not changed. As the Commission already found, this information is not known outside of ADS's business, and public disclosure of the confidential information could give competitors an advantage that would hinder ADS's ability to compete worldwide. The cloud-computing business is extremely competitive, and ADS's business interests would be harmed if any trade secret information is made public that could give its competitors an advantage or otherwise help ADS's competitors determine how ADS operates its data centers from a financial, energy, or logistical perspective. Consequently, an extension of the protective order is warranted because the information subject to that order continues to constitute trade secret information under Section 1333.61.

Finally, the protection of trade secret information from public disclosure is consistent with the purposes of Title 49 of the Revised Code because the Commission has access to the information, but at the same time the information is protected from other competitors. *Ohio Consumers' Counsel*, 2009-Ohio-604, at ¶ 26 (recognizing the need to balance the Commission's duty to provide access to public records with its need to preserve confidential information for market participants). Thus, the continued protection of ADS's trade secret information will not

impair the Commission's regulatory responsibilities. The Ohio Supreme Court has previously upheld the Commission's decision to protect trade secrets under similar circumstances. *Id.*

For each of these reasons, ADS's confidential information remains a trade secret, and should be protected as such.

CONCLUSION

Pursuant to Rule 4901-1-24(F), ADS respectfully requests that the Commission issue an order extending its protective order dated January 9, 2018, and extended on January 7, 2020, for a period of an additional twenty-four months, so that it remains in effect until January 7, 2024.

Dated: November 19, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Summary: Motion to Extend Protective Order electronically filed by Mr. David F.
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