

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application for )  
Establishment of a Reasonable )  
Arrangement Between Marathon ) Case No. 10-2777-EL-AEC  
Petroleum Company LP and Ohio )  
Power Company. )

ENTRY

The attorney examiner finds:

- (1) On November 22, 2010, pursuant to Section 4905.31, Revised Code, the Marathon Petroleum Company LP (Marathon) filed an application for approval of a unique arrangement with Ohio Power Company (Ohio Power) for electric service at its refinery in Canton, Ohio.
- (2) On November 22, 2010, Marathon filed a motion for a protective order regarding attachments 1 and 3 to its application. In support of its motion, Marathon explains attachments 1 and 3 identify energy efficiency and advanced energy projects that Marathon anticipates pursuing in the future. Specifically, Marathon explains that the information identifies estimates of total megawatt hour per year savings, the total demand reduction, the peak demand reduction, project costs, and the schedule for completion of each individual project. According to Marathon, this information is highly sensitive and proprietary because it reveals information regarding Marathon's plans for refinery operations, processes, and capital spending that, if made public, could give Marathon's competitors a competitive advantage. Marathon further explains that disclosure of this information derives independent economic value from not being generally known to Marathon's competitors and is held in confidence in the normal course of business.
- (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 the 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 Marathon, 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,<sup>1</sup> the attorney examiner finds that the information contained in the 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 the attachments could not be reasonably redacted to remove the confidential information contained therein. Therefore, the attorney examiner finds that Marathon’s motion for protective order is reasonable and should be granted with regard to the confidential information contained in attachments 1 and 3 filed confidentially on November 22, 2010.

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

- (7) Rule 4901-1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders issued pursuant to Rule 4901-1-24(D), O.A.C., automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this entry or until March 28, 2013. Until that date, the docketing division should maintain, under seal, the information filed confidentially.
- (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. Therefore, if Marathon 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 docketing division may release this information without prior notice to the Marathon.

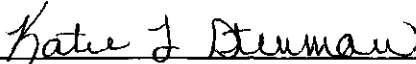
It is, therefore,


ORDERED, That the motion for protective order filed by Marathon on November 22, 2010, be granted in accordance with Finding (6). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal, unredacted attachments 1 and 3 filed under seal in this docket on November 22, 2010, for a period of 18 months, ending on March 28, 2013. It is, further,

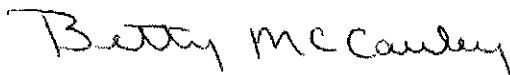
ORDERED, That a copy of this entry be served upon all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Katie L. Stenman  
Attorney Examiner

  
/dah

Entered in the Journal  
SEP 28 2011



Betty McCauley  
Secretary