

**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.)	

MOTION TO EXTEND PROTECTIVE ORDER

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LP**

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MOTION TO EXTEND PROTECTIVE ORDER

On September 28, 2011, the Public Utilities Commission of Ohio ("Commission") issued an Entry granting the Motion for Protective Order filed by Marathon Petroleum Company LP ("Marathon") to protect the confidentiality and prohibit disclosure of Attachments 1 and 3 filed under seal with the Application on November 22, 2010. The protective order is to expire on March 28, 2013, unless the Commission grants a motion to extend the order.

Pursuant to the provisions of Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C.") and the Commission's September 28, 2011 Entry, Marathon respectfully moves the Commission to extend the protective order issued on September 28, 2011, to protect the confidentiality and prohibit the disclosure of Attachments 1 and 3 filed under seal with the Application for an additional 36 months (March 28, 2016). The information contained in the attachments continues to be competitively sensitive and highly proprietary business information that the Commission has determined are trade secrets.

The attachments were clearly marked as confidential and filed under seal, separate from the remainder of the materials that comprised the Application.

The grounds for the Motion to Extend Protective Order are set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Frank P. Darr

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MEMORANDUM IN SUPPORT

On November 22, 2010, Marathon filed an Application for Establishment of a Reasonable Arrangement with Ohio Power Company ("OP") pursuant to Section 4905.31, Revised Code ("Application"). As part of the Application, Marathon included two separate lists of projects: 1) energy efficiency projects (both existing and potential) as Attachment 1; and, 2) advanced energy projects (both existing and potential) as Attachment 3. Marathon submitted these attachments under seal because they contained information that was competitively sensitive and highly proprietary business financial information which requires confidential treatment.

On September 28, 2011, the attorney examiner found that the attachments contain trade secret information. Entry at 2 (Sept. 28, 2011). The attorney examiner also held that non-disclosure of the information was not inconsistent with the purposes of Title 49, Revised Code. *Id.* Based on these findings, the attorney examiner granted the Motion for a Protective Order. The attorney examiner, however, limited the term of the Protective Order to 18 months and required a party wishing to extend the Order to file an appropriate motion at least 45 days in advance of the expiration date of March

28, 2013. *Id.* at 3.

Through this Motion to Extend Protective Order, Marathon requests that the current order be extended an additional 36 months, with the opportunity for Marathon to request a further extension if it can demonstrate that the information contained in Attachments 1 and 3 warrant further protection. As was the case when the Application was filed, the attachments contain competitively sensitive and highly proprietary business financial information that requires confidential treatment. The basis for finding that the attachments contain trade secrets that may not be lawfully disclosed remains as true today as when the attorney examiner made the initial finding in September 2011.

Rule 4901-1-24(D), O.A.C., provides for the issuance of an order that is necessary to protect the confidentiality of information contained in documents filed at the Commission to the extent that state and federal laws prohibit the release of such information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.

State law recognizes the need to protect information that is confidential in nature, as is the information contained in Attachments 1 and 3. Sections 4901.12 and 4905.07, Revised Code, facilitate the protection of trade secrets in the Commission's possession.¹ Sections 4901.12 and 4905.07, Revised Code, reference Section 149.43, Revised Code, and thereby incorporate the provision that excepts from the public record

¹ Section 4901.12, Revised Code, provides: "Except as otherwise provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all proceedings of the public utilities commission and all documents and records in its possession are public records."

Section 4905.07, Revised Code, provides: "Except as provided in section 149.43 of the Revised Code and as consistent with the purposes of Title XLIX [49] of the Revised Code, all facts and information in the possession of the public utilities commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature in its possession shall be open to inspection by interested parties or their attorneys."

information and records the release of which is prohibited by law.² State law prohibits the release of information meeting the definition of a trade secret.

The definition of trade secret contained in Section 1333.61(D), Revised Code, is as follows:

“Trade secret” means information, 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.

Section 1333.61(D), Revised Code, (emphasis added).

The confidential information in Exhibits 1 and 3 is comprised of competitively sensitive and highly proprietary business and financial information falling within the statutory characterization of a trade secret, as defined by Section 1333.61(D), Revised Code.³ The sealed information identifies energy efficiency and advanced energy projects that Marathon has pursued and anticipates pursuing. The Exhibits filed under seal identify estimates of the total megawatt hour per year (“MWH/yr”) savings, the total demand reduction, the peak demand reduction, project costs, and the schedule for completion of each individual project. This information is highly sensitive and

² Section 149.43(A)(1)(v), Revised Code, provides in part: “‘Public record’ does not mean records the release of which is prohibited by state or federal law.”

³ Marathon has redacted only information that is essential to prevent disclosure of the confidential trade secrets.

proprietary because it reveals information regarding Marathon's plans for refinery operations, processes, and capital spending that, if made public, would give Marathon's competitors a competitive advantage. Marathon's Canton refinery is particularly sensitive to releasing information regarding its processes and operations given its susceptibility to market impacts. Specifically, in a supply and demand market, the highest cost producer of a given product or commodity is forced out of the market during tough times. Small refineries, like the Canton refinery, have the highest operating costs (dollars per barrel of crude processed) since they have similar numbers of units and people, yet process less volume. Thus, potential, achievable efficiencies are and must continue to be protected.

This information includes technical and cost information as well as describes the design and process of Marathon's potential energy efficiency and advanced energy projects. This information further constitutes business information or plans that meet both prongs of the trade secret definition. Public disclosure of this information would jeopardize Marathon's business position and its ability to compete. This information derives independent economic value, actual or potential, from not being generally known to Marathon's competitors. As part of its original application, Marathon verified that this information was not generally known by the public and is held in confidence in the normal course of business. Further, this information is not readily ascertainable by proper means by Marathon's competitors that could obtain economic value from its disclosure or use.

This motion seeks an extension of the protective order for 36 months (until March 28, 2016). The Commission's rule contemplates that a protective order with a term

longer than 18 months can be ordered if the Commission determines that a different term is appropriate. Further, the rule does not specify any term for an extension of a protective order. Rule 4901-1-24(F), OAC. The projects described in the application are long-lived. As a result, the information remains a trade secret, and the need for protection will extend beyond another 18 months. To ease the administrative burden on the Commission and the applicant, therefore, there is good cause to extend the protective order for an additional 36 months, at which time Marathon can decide whether it will seek a further extension.

WHEREFORE, Marathon respectfully requests that this Motion To Extend Protective Order be granted for the reasons set forth herein.

Respectfully submitted,

/s/ Frank P. Darr

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Extend Protective Order* was served upon the following parties of record this 18th day of January 2013, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.

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ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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Summary: Motion to Extend Protective Order electronically filed by Mr. Frank P Darr on behalf of Marathon Petroleum Company LP