

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 September 28, 2011 the attorney examiner granted Marathon's motion for a protective order regarding Exhibits 1 and 3 that were filed as part of Marathon's application in this proceeding.
- (3) Pursuant to its motion of January 18, 2013, Marathon seeks to further extend the protective order for a period of thirty-six months. In support of its request, Marathon explains that Exhibits 1 and 3 contain energy efficiency and advanced energy projects that Marathon has pursued and anticipates pursuing, and also includes the total megawatt hour per year savings, total demand reduction, peak demand reduction, project costs, and the schedule for completion of each individual project. Marathon asserts that Exhibits 1 and 3 reveal information regarding Marathon's plans for refinery operations, processes, and capital spending. Marathon states that if such plans were made public, its competitors would gain a competitive advantage. Furthermore, Marathon asserts that information contained in Exhibits 1 and 3 is not readily ascertainable by other means or generally known to the public, and is held in confidence in the normal course of business. Finally, Marathon submits that the information continues to be competitively sensitive trade secret

information and public disclosure would impair Marathon's ability to compete in the marketplace.

- (4) 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.
- (5) Similarly, Rule 4901-1-24, Ohio Administrative Code (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."
- (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." Section 1333.61(D), Revised Code.
- (7) 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,¹ 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 exhibits 1 and 3 filed confidentially on November 22, 2010.

- (8) 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 July 25, 2014. Until that date, the docketing division should maintain, under seal, the information filed confidentially.
- (9) 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 to extend protective treatment be granted in accordance with Finding (7). It is, further,

ORDERED, That the Commission's docketing division maintain, under seal exhibits 1 and 3 for a period of 18 months, ending on July 25, 2014. It is, further,

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

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Katie Stenman

By: Katie L. Stenman
Attorney Examiner

SEF/sc

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in

Case No(s). 10-2777-EL-AEC

Summary: Attorney Examiner Entry granting motion to extend protective treatment. -
electronically filed by Sandra Coffey on behalf of Katie Stenman, Attorney Examiner, Public
Utilities Commission of Ohio