

**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
AND MEMORANDUM IN SUPPORT**

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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 for Establishment of a Reasonable Arrangement ("Application") with Ohio Power Company ("OP") on November 22, 2010. On January 25, 2013, the Commission granted Marathon's Motion to Extend Protective Order. The Protective Order is to expire on July 25, 2014, unless the Commission grants a motion to extend the order.

Pursuant to the provisions of Rule 4901-1-24(D), Ohio Administrative Code ("O.A.C."), and the Commission's January 25, 2013 Entry, Marathon respectfully moves the Commission to extend the Protective Order issued on January 25, 2013, to protect the confidentiality and prohibit the disclosure of Attachments 1 and 3 filed under seal with the Application for an additional 24 months.¹ The information contained in the

¹ On January 22, 2014, the Commission adopted modifications to Rule 4901-1-24, O.A.C. *In the Matter of the Commission's Review of Chapters 4901-1, Rules of Practice and Procedure; 4901-3, Commission Meetings; 4901-9, Complaint Proceedings; and 4901:1-1, Utility Tariffs and Underground Protection, of the Ohio Administrative Code*, Case No. 11-776-AU-ORD, Opinion and Order, Attachment A at 34-35 (Jan. 22, 2014). Among other things, the modifications adopted by the Commission change the standard

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,

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duration of protective orders from 18 months to 24 months. The rule is likely to become effective during the term of the order requested, and the Commission's recent approval of the proposed extension of the period of protection indicates that the Commission has deemed a 24-month period reasonable.

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MEMORANDUM IN SUPPORT

On November 22, 2010, Marathon filed an Application pursuant to Section 4905.31, Revised Code. 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 Protective Order.

On January 18, 2013, Marathon filed a Motion to Extend Protective Order that was set to expire on March 28, 2013. In an Entry dated January 25, 2013, the Commission granted Marathon's Motion to Extend Protective Order. In the January 25, 2013 Entry, the Commission found that the attachments to Marathon's November 22,

2010 Application contain trade secret information. Entry at 3 (Jan. 25, 2013). 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 to Extend Protective Order. *Id.* The attorney examiner, however, limited the extension of the Protective Order to an additional 18 months and required a party wishing to extend the Protective Order to file an appropriate motion at least 45 days in advance of the expiration date of July 25, 2014. *Id.* at 3.

Through this Motion, Marathon requests that the current order be extended an additional 24 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 Commission 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.² 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 information and records the release of which is prohibited by law.³ 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 Attachments 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

² Section 4901.12, 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 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.”

³ Section 149.43(A)(1)(v), Revised Code, provides in part: “‘Public record’ does not mean ... [r]ecords the release of which is prohibited by state or federal law.”

Code.⁴ The sealed information identifies energy efficiency and advanced energy projects that Marathon has pursued and anticipates pursuing. The attachments 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 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

⁴ Marathon has redacted only information that is essential to prevent disclosure of the confidential trade secrets.

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 24 months. The confidential projects described in the Application under seal are long-lived. As a result, the information remains a trade secret, and the need for protection will extend at least another 24 months.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Extend Protective Order and Memorandum in Support* was served upon the following parties of record this 29th day of April 2014, *via* electronic transmission, hand-delivery, or ordinary U.S. mail, postage prepaid.

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ATTORNEY EXAMINERS

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