

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**In the Matter of Montana-Dakota
Utilities Co. 2022 Application for
Increase in Electric Rates**)

**Case No. PU-22-194

OAH File No. 20220225**

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is made by and between Montana-Dakota Utilities Co. (“Montana-Dakota”) and the following Parties: North Dakota Public Service Commission Advocacy Staff; Marathon Petroleum Company LP; Walmart Inc.; and AARP, collectively referred to as “the Parties”.

1. This Agreement is made in order for the Parties to receive from Montana-Dakota certain business information (“Confidential Information” as defined below) under terms that will protect the confidential and proprietary nature of such information. The Confidential Information is being provided to the Parties by Montana-Dakota in connection with North Dakota Public Service Commission Case No. PU-22-194 captioned “In the Matter of Montana-Dakota Utilities Co. 2022 Application for Increase in Electric Rates”.
2. As used herein, “Confidential Information” shall mean any and all technical or business information, cost studies and financial information, in whatever form or medium, including, but not limited to, product/service specifications, prototypes, computer programs, models, drawings, marketing plans, and personnel information and statistics, which are deemed by Montana-Dakota as constituting trade secrets, valuable or sensitive commercial or financial information that is otherwise deemed confidential or proprietary by Montana-Dakota or its affiliates,

and which is marked or otherwise identified as Confidential or Proprietary by Montana-Dakota. Any third-party information furnished or disclosed to the Parties by Montana-Dakota shall be deemed Confidential Information and shall be subject to the terms and conditions herein. Confidential Information shall also include any documents or information that has been previously deemed confidential or trade secret protected information in any prior proceeding before the North Dakota Public Service Commission.

Notwithstanding the foregoing, Confidential Information shall not include information (a) that was, as evidenced by a written document, in the public domain at the time of the disclosure to the Parties; (b) that, as evidenced by a written document, becomes in the public domain other than through actions of the Parties or any of its Representatives; (c) that, as evidenced by a written document, was rightfully and lawfully in the possession of the Parties (and was not otherwise subject to restriction as to disclosure) at the time of disclosure or that the Parties rightfully and lawfully received the information at a later date from a third party provided such third party has the right to make the disclosure to the Parties; or (d) can be shown to have been rightfully and lawfully independently developed by the Parties through the efforts of its employees or contractors who have not had access to the Confidential Information.

3. Subject to the requirements of Paragraph 4 to return Confidential Information to Montana-Dakota, the Parties agree to hold the Confidential Information disclosed under this Agreement in confidence indefinitely, unless otherwise agreed to in writing by Montana-Dakota. The Parties (1) will use the Confidential Information

solely for the purposes of this Agreement unless otherwise allowed herein or by written permission of Montana-Dakota; (2) agrees not to copy such Confidential Information unless specifically authorized in writing; and (3) will not disclose such Confidential Information to anyone except “Authorized Representatives” of the Parties to whom disclosure is necessary for participation in Case No. PU-22-194. “Authorized Representative” includes and extends to all counsel, agents, employees, witnesses, and experts of the Parties who are charged with the responsibility of participating in Case No. PU-22-194. The Parties shall appropriately notify each employee, agent, witness or expert to which the information is disclosed that the disclosure is made in confidence and shall be kept in confidence in accordance with this Agreement. No Confidential Information shall be provided to the Parties’ employees, agents, witnesses or experts until that person signs a Nondisclosure Agreement in the form attached hereto as “Exhibit A”. The original signed Nondisclosure Agreement for each person viewing Confidential Information shall be sent to Montana-Dakota before the Confidential Information is made available to that person.

4. In the event permission is granted by Montana-Dakota to copy Confidential Information, the Parties agree that each such copy shall contain and state the same confidential or proprietary notices or legends, if any, which appear on the original. All original Confidential Information and permitted copies shall be returned to Montana-Dakota or destroyed upon request, or upon the closure of the referenced docket.
5. Copies of Confidential Information shall not be filed with the North Dakota Public

Service Commission or provided to counsel, employees, or staff of the Commission unless the Confidential Information is clearly marked and protected from unauthorized public disclosure as a trade secret under Chapter 69-02-09 of the North Dakota Administrative Code. The Parties agree to file, or request Montana-Dakota file, an application with the Commission for trade secret protection and be granted such protection pursuant to Chapter 69-02-09 of the North Dakota Administrative Code prior to filing or submitting any Confidential Information with the Commission.


6. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Agreement, shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of the above entitled docket and then solely as contemplated herein, and shall keep the Confidential Information secure as trade secret, confidential, or proprietary information and in accordance with the purpose and intent of this agreement.
7. Any notes maintained by the Parties of Confidential Information which embody or reflect any of the Confidential Information provided under this Agreement shall, upon the request of Montana-Dakota, be either sent to Montana-Dakota or destroyed with an attestation that such notes have been destroyed.
8. The furnishing of any document, information, data, study, or other materials pursuant to this Agreement shall in no way limit or waive the right of Montana-Dakota to object to its relevance or admissibility in any proceeding before the Commission.

9. Neither this Agreement nor any rights hereunder in whole or in part shall be assignable or otherwise transferable by the Parties and the obligations contained in this Agreement shall survive and continue after termination of this Agreement.
10. This Agreement shall be governed and construed by the laws of the State of North Dakota.
11. This Agreement constitutes the entire Agreement between Montana-Dakota and the Parties with respect to the subject matter of this Agreement. No provisions of this Agreement shall be deemed waived, amended or modified by any party, unless such waiver, amendment or modification is made in writing and signed by the parties.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to sign this Agreement.

Dated this 28th day of November, 2022.

MONTANA-DAKOTA UTILITIES CO.

By: 
Its: Counsel

Dated this 28th day of November, 2022.

**NORTH DAKOTA PUBLIC SERVICE
ADVOCACY STAFF**

By: *Mitchell D. Stuy*
Its: Counsel

Dated this 28th day of November, 2022.

MARATHON PETROLEUM COMPANY LP

By: *Kenneth R. Stark*
Its: Counsel

Dated this 28th day of November, 2022.

WALMART INC.

By: *Julie A. Claul*
Its: Counsel

Dated this _____ day of November, 2022.

AARP

By: _____
Its: _____

Dated this _____ day of November, 2022.

**NORTH DAKOTA PUBLIC SERVICE
ADVOCACY STAFF**

By: _____

Its: _____

Dated this 28th day of November, 2022.

MARATHON PETROLEUM COMPANY LP

By: Donnetto R. Stank

Its: Counsel

Dated this 28th day of November, 2022.

WALMART INC.

By: Julie A. Claul

Its: Counsel

Dated this 30th day of November, 2022.

AARP

By: John B. Coffman

Its: Counsel

EXHIBIT A TO CONFIDENTIALITY AGREEMENT

I, the undersigned, hereby acknowledge that I have read the attached Confidentiality Agreement entered into in North Dakota Public Service Commission Case No. PU-22-194 and understand the terms thereof and agree to be bound by all such terms. Without limiting the generality of the foregoing, I agree not to disclose any materials or information designated "Confidential Information" or "Trade Secret Information" or disclose any copies of or extracts from such materials or information to any person or entity not authorized to receive such materials or information under the terms of the Confidentiality Agreement. I further agree to use any such materials disclosed to me solely for the purposes in Case No. PU-22-194 and for no other purpose.

I hereby submit myself to the jurisdiction of the North Dakota Office of Administrative Hearings for the purpose of enforcing the said Confidentiality Agreement.

Dated this _____ day of _____, 202__.

Signature

Print Name

Name of Party

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Marathon Petroleum Company LP

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Dated today, December 8, 2022.

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By: /s/ Paul Sanderson
Paul R. Sanderson (ID# 05830)