

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
)	
UNION OIL COMPANY OF CALIFORNIA,)	Docket No. 9305
)	
a corporation.)	
)	

**NON-PARTY BP AMERICA’S SECOND MOTION FOR *IN CAMERA* TREATMENT
OF HEARING EXHIBITS DESIGNATED BY COMPLAINT COUNSEL
AND UNION OIL COMPANY OF CALIFORNIA**

Non-party BP America Inc. (“BP America” or “BP”) moves for an order directing *in camera* treatment of ten exhibits. Five of these are supplemental exhibits that Union Oil Company of California (“Unocal”) has designated; the other five include four documents and one set of deposition excerpts that Complaint Counsel has designated for possible introduction at the hearing scheduled to begin on December 16, 2003.

On September 24, 2003, Complaint Counsel notified BP West Coast Products, LLC, (“BP West Coast”), an affiliate of BP America Inc., concerning 97 exhibits on the FTC’s exhibit list that may contain sensitive information belonging to BP entities. On October 14, 2003, Unocal supplemented its earlier notification with 24 additional exhibits from BP West Coast’s subpoena production in this matter.¹ On October 23, 2003, Complaint Counsel added one item from the subpoena production to its exhibit list. BP America has identified ten exhibits from these lists for *in camera* protection. Public disclosure of any of these exhibits is likely to cause direct, serious harm to BP’s competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(g),

¹ By motion filed on October 20, 2003, BP America sought *in camera* protection for certain documents identified by Unocal in its first notice letter, dated September 26, 2003.

BP America respectfully moves for *in camera* treatment of its confidential business information identified in the Declaration in support of this Motion, and attached thereto as Exhibits A-J.

**BP AMERICA’S CONFIDENTIAL INFORMATION DESERVES *IN CAMERA*
TREATMENT UNDER THE FEDERAL TRADE COMMISSION’S
RULES OF PRACTICE**

BP America is not a party to this proceeding. The information in Exhibits A-J is fundamental to BP’s current gasoline refining operations, particularly its refinery in Carson, California. BP has guarded the confidentiality of these materials carefully. Public disclosure of these exhibits could result in serious competitive injury to BP America, while adding little, if any, incremental value to the public’s understanding of the issues in this proceeding.

Accordingly, Exhibits A-J merit *in camera* treatment. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999).

A. BP America Has Preserved The Confidentiality Of Its Information

BP America has taken significant steps to protect the confidential nature of each Exhibit for which it seeks protection. These Exhibits were provided to Unocal only under compulsory process in this matter. BP designated its materials “Confidential” or “Restricted Confidential – Attorney Eyes Only” under the Protective Order and pursuant to an agreement between BP and several other non-party refiners on the one hand and Complaint Counsel and Unocal on the other. That agreement was designed to expedite discovery while ensuring that materials produced by the non-party refiners would receive sufficient protection from disclosure to competitors. It permits a refiner to invoke the higher level of protection (“Restricted Confidential – Attorney Eyes Only”) under the Protective Order in the event the FTC or Unocal should decide that it wants to show that refiner’s information to a witness who is an employee of a competitor.

Finally, BP America has followed procedures to preserve the confidentiality of information shared with its business partners, as described more fully in the attached Declaration and as demonstrated by its treatment of Exhibits A and B. All these efforts show that BP America has preserved the confidentiality of its materials.

B. Disclosure Of The Information In Exhibits A-J Could Result In Serious Competitive Injury To BP America

The information for which BP America seeks *in camera* treatment has direct and tangible impact on its day-to-day refining activities and its future competitive position. As explained in the attached Declaration, Exhibits A and B contain an Agreement between BP America and another large refiner in which both parties consent not to assert against each other their respective patent rights covering a defined field of fuels. The purpose of the Agreement is to facilitate the development and production of clean fuels that comply with governmental standards without fear of potential liability. Disclosure of these documents could damage BP America's ability to negotiate other such mutually beneficial agreements, and disrupt ongoing negotiations with other refiners. Exhibits C and D contain batch data for CARB summertime gasoline. BP designated these documents "Restricted Confidential – Attorney Eyes Only" because they specify the properties, characteristics and volumes for the Carson Refinery. Public access to BP's batch data would expose the refinery to asymmetrical business relations with its customers, suppliers and competitors – all of whom could use this information to harm BP in the marketplace. The deposition testimony in Exhibit E discusses specific blending abilities and constraints at Carson, and describes the impact of particular operational strategies and equipment upgrades on the refinery's output and economics. Exhibit F contains competitively sensitive economic analysis of a proposal for premium gasoline production at this refinery. Exhibits G-I include a variety of competitively sensitive documents discussing production plans, capital

investment strategies, and blending processes to optimize BP West Coast's operations for CARB Phase 3 requirements. (CARB Phase 3 refers to the gasoline specifications that are used currently at some refineries, and which are mandated for 2004). Finally, Exhibit J reflects BP's confidential analysis of current blending strategies at the Carson Refinery in relation to patent avoidance. BP America developed the information in these exhibits through many hours of work, study and substantial investment. Disclosing the current and future operating strategies, blending processes and investment plans of BP America could seriously injure its ability to compete equally against other refiners in the marketplace under the CARB Phase 3 regulations.

C. The Public Interest In Disclosure Of Exhibits A-J Is Outweighed By The Likelihood Of Serious Competitive Harm To BP America

BP America deserves "special solicitude" as a non-party requesting *in camera* treatment for its confidential business information. *See Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (order directing *in camera* treatment for sales statistics over five years old). Reasonable extensions of *in camera* treatment encourage non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* BP has cooperated with the discovery demands in this case, and as mentioned above, has even taken steps to facilitate the access of the parties to highly sensitive non-party documents. Conversely, publicizing BP America's confidential operating strategies for success in the CARB Phase 3 environment, disclosing its cost structures and refining limitations, and revealing its private agreements will not promote the resolution of this matter. Nor will these materials uniquely enhance public understanding of these proceedings. The balance of interests clearly favors *in camera* protection for Exhibits A-J. *See In re Bristol-Myers*, 90 F.T.C. 455, 456 (1977) (describing six-factor test for determining secrecy and materiality).

D. Protection For Exhibits A-J Should Extend For Five Years

The value of the Agreement contained in Exhibits A and B to BP America's business warrants lasting protection. Similarly, the batch data in Exhibits C and D should remain confidential for a substantial amount of time to prevent the Carson Refinery's peers from learning exactly what it produces at any given time, as well as year-to-year. Finally, the forward-looking operational strategies, blending methods and investment analyses reflected in Exhibits E-J call for strong protection to ensure that BP America can compete on equal terms with other refiners under the coming CARB Phase 3 regime. Accordingly, BP America respectfully requests that all of these materials be afforded *in camera* protection for a period of five years.

CONCLUSION

Exhibits A-J satisfy the standard for *in camera* protection under the Commission's Rules of Practice and relevant FTC rulings. Accordingly, this Court should extend *in camera* protection to the confidential materials of BP America. We have conferred with Complaint Counsel and counsel for Unocal about this Motion and the specific information for which *in camera* protection is sought, and both Parties have indicated that they do not oppose this Motion.

DATED: October 24, 2003

Respectfully submitted,

Donald B. Craven
AKIN GUMP STRAUSS HAUER &
FELD, LLP
1333 New Hampshire Ave., NW
Washington, DC 20036

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
UNION OIL COMPANY OF CALIFORNIA,)	Docket No. 9305
)	
a corporation.)	
)	

[PROPOSED] ORDER

Upon consideration of Non-Party BP America’s Unopposed Second Motion For *In Camera* Treatment Of Hearing Exhibits Designated By Complaint Counsel And Union Oil Company Of California, **IT IS HEREBY ORDERED** that the following materials are to be provided *in camera* treatment:

Exhibit	CX	Production Bates Numbers
A	1731	BPUNO-0001423 to 1427
B	0778	BPUNO-0001428 to 1432
C	2166	BPUNOBD-0000001 to 27
D	1781	BPUNOBD-0000028 to 37
E	Deposition Transcripts of Gary Youngman, 6/25/03 and 8/7/03	Page 54, lines 2 through 21 (6/25/03). Page 56, line 12 through page 57, line 4; page 73, line 10 through page 74, line 12; page 76, line 9 through page 77 line 5; and page 91, line 4 through page 92, line 12 (8/7/03).

and:

Exhibit	RX	Production Bates Numbers
F	1048	BPUNO-0009107
G	1052	BPUNO-0009136 to 9188
H	1053	BPUNO-0009137 to 9139
I	1056	BPUNO-0009591 to 9593
J	1066	BPUNO-0009601 to 9606

The Honorable D. Michael Chappell
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that on October 24, 2003, I caused an original and two copies of Non-Party BP America's Unopposed Second Motion For In Camera Treatment Of Hearing Exhibits Designated By Complaint Counsel And Union Oil Company Of California to be filed by hand and one electronic copy of that motion to be filed by electronic mail with:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-159
Washington, DC 20580

I also certify that on October 24, 2003, I caused two copies of the foregoing motion to be served by U.S. mail upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

I also certify that on October 24, 2003, I caused one copy of the foregoing motion to be served by hand delivery upon each person listed below:

J. Robert Robertson, Esq.
Senior Litigation Counsel
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Richard B. Dagen, Esq.
(through service upon)
Chong S. Park, Esq.
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, NW, Rm. NJ-6213
Washington, DC 20001

I also certify that on October 24, 2003, I also caused one copy of the foregoing motion to be served by U.S. mail upon:

David W. Beehler, Esq.
Robins, Kaplan, Miller & Ciresi, LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

With an additional copy by overnight mail to:

Diane L. Simerson
Robins, Kaplan, Miller & Ciresi, LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

Joel A. Christie
AKIN GUMP STRAUSS HAUER
& FELD LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036

COPY CERTIFICATION

I certify that the electronic version of NON-PARTY BP AMERICA'S SECOND MOTION FOR *IN CAMERA* TREATMENT OF HEARING EXHIBITS DESIGNATED BY COMPLAINT COUNSEL AND UNION OIL COMPANY OF CALIFORNIA filed by electronic mail with the Secretary of the Commission is a true and accurate copy of the paper original and that a paper copy with original signature has been filed with the Secretary of the Commission on this day.

Dated October 24, 2003

By: _____

Joel A. Christie
AKIN GUMP STRAUSS HAUER
& FELD LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036