

**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 CHEVRON’S MOTION FOR *IN CAMERA* TREATMENT OF HEARING
EXHIBITS DESIGNATED BY UNION OIL COMPANY OF CALIFORNIA**

Non-party Chevron U.S.A., Inc. (“Chevron”) moves for an order directing *in camera* treatment of three documents that Union Oil Company of California (“Unocal”) has designated for possible introduction at the hearing scheduled to begin on November 13, 2003. Chevron produced over 2,500 pages of discovery material in response to Unocal’s discovery demands in this matter. Unocal notified Chevron on September 26, 2003 that it intended to introduce into evidence approximately 76 exhibits from the Chevron subpoena production in this matter, along with several other sources of discovery material provided by Chevron and its predecessors. From Unocal’s comprehensive exhibit list, Chevron has identified three documents for *in camera* protection. Public disclosure of one or more of these documents is likely to cause direct, serious harm to Chevron’s competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(g), Chevron respectfully moves for *in camera* treatment of its confidential business documents identified in the Declaration in support of this Motion, and attached thereto as Exhibits A-C.

**CHEVRON'S CONFIDENTIAL DOCUMENTS DESERVE *IN CAMERA*
TREATMENT UNDER THE FEDERAL TRADE COMMISSION'S RULES OF
PRACTICE**

Chevron is not a party to this proceeding. The information in Exhibits A-C is fundamental to Chevron's current gasoline refining operations, particularly its refineries in El Segundo and Richmond, California. Chevron has guarded the confidentiality of these documents carefully. Public disclosure of these materials would result in serious competitive injury to Chevron, while adding very little incremental value to the public's understanding of the issues in this proceeding. Accordingly, Exhibits A-C merit *in camera* treatment. See *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999).

A. Chevron Has Preserved The Confidentiality Of Its Documents

Chevron has taken significant steps to protect the confidential nature of each document for which it seeks protection. These Exhibits were provided to Unocal only under compulsory process and pursuant to the Protective Order in this matter. Chevron designated Exhibits A and B as "Confidential" under the Protective Order pursuant to an agreement between Chevron and several other non-party refiners on the one hand and Complaint Counsel and Unocal on the other for the purpose of expediting discovery while ensuring that materials produced would receive sufficient protection from disclosure to competitors. That agreement permits the non-party refiners to invoke the higher level of protection under the Protective Order in the event the FTC or Unocal should decide that it wants to show the document to a witness who is an employee of a competitor of the producing party. Chevron designated Exhibit C as "Restricted Confidential – Attorney Eyes Only" under the Protective Order prior to providing it to Unocal. Finally, Chevron 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 Chevron has preserved the confidentiality of Exhibits A-C.

B. Disclosure Of The Information In Exhibits A-C Could Result In Serious Competitive Injury To Chevron

The information for which Chevron seeks *in camera* treatment has direct and tangible impact on its day-to-day refining activities and its overall competitive position. As explained in the attached Declaration, Exhibit A contains an executed agreement, and Exhibit B contains a proposed agreement, between Chevron and another party (a different large refiner in each case) that permits the parties to employ each other's technologies for clean fuels without fear of injunctions or oppressive royalty payments. As described in the Declaration, disclosure of these documents could damage Chevron's ability to negotiate other such mutually beneficial agreements. Exhibit C contains detailed technical and economic analyses of the means by which Chevron has chosen to optimize current production of CARB Phase 3 gasoline at its California refineries. (CARB Phase 3 refers to the gasoline specifications that are used currently at some refineries, and which are mandated for 2004). Disclosure of this document could allow a competitor to determine Chevron's cost structures, capacity constraints and supply needs. A rival could use this information opportunistically during supply and demand swings that expose the El Segundo and Richmond Refineries' particular limitations, resulting in serious and irreparable harm to Chevron. In addition, if this information were known to parties with whom Chevron transacts various purchase and supply deals relating to production at these refineries, it could jeopardize those relationships or bias them to Chevron's economic detriment.

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

Chevron 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.* Chevron 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, disclosing one document containing Chevron’s confidential operating strategies, and revealing two documents that reflect private agreements, will not promote the resolution of this matter. Nor will these documents uniquely enhance public understanding of these proceedings. The balance of interests clearly favors *in camera* protection for Exhibits A-C. *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-C Should Extend For Five Years

The value of the agreements contained in Exhibits A and B to Chevron’s business warrants lasting protection. Chevron respectfully requests that these documents be afforded *in camera* protection for a period of five years. Similarly, investments in refinery modifications, particularly for purposes of complying with major new regulations like the CARB Phase 3 requirements, are not short-lived. Years of planning, construction and fine-tuning go into the economic analyses and operational configurations of these facilities. Given the importance of Exhibit C to Chevron’s current operations and competitive position, Chevron further requests that this document be afforded *in camera* protection for a period of five years.

CONCLUSION

Exhibits A-C 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 these confidential documents of Chevron. We have exchanged correspondence with counsel for Unocal about this Motion and the specific documents for which *in camera* protection is sought, and they have indicated that they do not oppose this Motion.

DATED: October 17, 2003

Respectfully submitted,

Donald B. Craven
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[PROPOSED] ORDER

Upon consideration of Non-Party Chevron's Unopposed Motion For *In Camera* Treatment Of Hearing Exhibits Designated By Union Oil Company Of California, **IT IS HEREBY ORDERED** that the following documents are to be provided *in camera* treatment:

EXHIBIT	RX	PRODUCTION BATES NUMBERS
A	245	CHUNO-0000312 to 316
B	246	CHUNO-0001115 to 1120
C	1041	CHUNO-0001748 to 1759

The Honorable D. Michael Chappell
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that on October 17, 2003, I caused an original and two copies of Non-Party Chevron's Unopposed Motion For In Camera Treatment Of Hearing Exhibits Designated By 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 17, 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 17, 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 17, 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

C. Fairley Spillman
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 CHEVRON'S MOTION FOR *IN CAMERA* TREATMENT OF HEARING EXHIBITS DESIGNATED BY 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 17, 2003

By: _____

C. Fairley Spillman
AKIN GUMP STRAUSS HAUER
& FELD LLP
1333 New Hampshire Avenue NW
Washington, DC 20036