

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

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

**DECLARATION OF BRIAN P. SMITH IN SUPPORT OF
SHELL’S MOTION FOR *IN CAMERA* TREATMENT**

I, Brian P. Smith, declare as follows:

1. I am the Director of Manufacturing and Marketing, Base Oils and Specialty Products, at Shell Oil Products United States (“Shell”). My responsibilities in this position include operations management and business planning for refinery products at all Shell refineries.

2. The documents for which Shell requests *in camera* protection, attached as Exhibits A-X hereto, are identified as:

EXHIBIT	RX	PRODUCTION BATES NUMBERS
A	1033	SHUNO-0006021 to 6030
B	220	SHUNO-0002591 to 2592
C	585	SHUNO-0004675 to 4676
D	578	SHUNO-0003328 to 3340
E	1015	SHUNO-0004705 to 4723
F	587	SHUNO-0004317 to 4335
G	576	SHUNO-0002593 to 2611
H	205	SHUNO-0001473 to 1488
I	584	SHUNO-0004496 to 4497
J	353	SHUNO-0001537 to 1538
K	1028	SHUNO-0006039 to 6040
L	1029	SHUNO-0006037 to 6038
M	1030	SHUNO-0006032
N	1016	SHUNO-0004703 to 4704

EXHIBIT	RX	PRODUCTION BATES NUMBERS
O	217	SHUNO-0000056 to 57
P	218	SHUNO-0001040 to 1098
Q	352	SHUNO-0001040 to 1098
R	534	SHUNO-0002239 to 2240
S	535	SHUNO-0001793 to 1795
T	1027	SHUNO-0006042 to 6043
U	205A	SHUNO-0001669 to 1673
V	206A	SHUNO-0001647 to 1663
W	429	SHUNO-0004409 to 4419
X	Millar Deposition Transcript	Page 28, line 22 through Page 33, line 12 Page 52, line 25 through Page 55, line 21

3. I have reviewed the documents for which Shell seeks *in camera* treatment. As Director of Manufacturing and Marketing, I am familiar with the type of information contained in Exhibits A-X and the purposes for which those documents are used in Shell's operations. I am also generally familiar with the confidentiality protection afforded this type of information by Shell. Based upon my review of these documents, my knowledge of Shell's business, and my familiarity with the confidentiality protection that Shell affords information of this type, it is my belief that public disclosure of these documents could cause serious competitive injury to Shell.

4. Shell is not a party to the captioned matter. It is my understanding that Exhibits A-X were produced to Union Oil Company of California ("Unocal") with the designation "Confidential" pursuant to the Protective Order in this matter. Other than that production, these documents – with two exceptions – have not been disclosed to anyone outside of Shell, to the best of my knowledge. The first exception relates to documents Shell representatives presented to, or discussed with, officials from the California Air Resources Board ("CARB"). These documents are Exhibits D, E, F, G, H, U and V attached hereto, and they are discussed below in Paragraphs 7, 8 and 15. The information in these documents was disclosed to CARB with the understanding it would be held in confidence. The second exception is Exhibit W, a proposed cross-licensing agreement between Shell and Chevron U.S.A., Inc. that has been the subject of confidential negotiations between the parties, as described below in Paragraph 17.

Exhibits

5. Exhibit A (RX 1033; SHUNO-0006021 to 6030) is an internal business planning document relating to the use of on-line blending certification technology at Shell's Los Angeles Refinery. It contains several slides presenting the business advantages and cost justification for this project, as well as a detailed appropriation request to fund the project. This document was prepared by Shell personnel for review by refinery management. It is my understanding that Exhibit A was produced to Unocal with the designation "Confidential" pursuant to the Protective Order in this matter. Apart from that production, this document has not been disclosed to any third party, to the best

of my knowledge. Shell has dedicated significant resources to achieving on-line blending certification capability at its Los Angeles facility, and it employs similar technology at its Martinez Refinery. Disclosure of Exhibit A could cause Shell to suffer serious business injury. This document discusses the type of on-line certification used by Shell, the amount it spent (and continues to spend) to utilize this technology, and the production and financial benefits it derives. If competitors had access to these details, they could configure their blending certification processes at lower investment levels than Shell, to the detriment of Shell's competitive position.

6. Exhibits B and C (RX 220, SHUNO-0002591 to 2592; and RX 585, SHUNO-0004675 to 4676) are virtually identical documents. The information in these documents was prepared to assist Shell representatives who would be meeting with officials from CARB regarding its Phase 3 rulemaking. (CARB Phase 3 refers to the gasoline specifications which are used currently at some refineries and which are mandated for 2004.) These documents were not public presentations; rather, they were meant to advise the Shell representatives about particular blending constraints and trade-offs faced by Shell's Martinez Refinery. Armed with this knowledge, those representatives could then decide how best to respond to various CARB proposals regarding regulatory "flexibility." Most of the constraints identified in these documents still exist today. In the hands of a competitor, this knowledge could do great damage to Shell's economic interests. For example, access to the information in Exhibits B and C about the blending limitations and gasoline pool characteristics of the Martinez Refinery could allow a rival to exploit this facility's vulnerabilities and take some of its business during times when the refinery's key blending components are in short supply.

7. Exhibit D (RX 578; SHUNO-0003328 to 3340) is a series of presentation slides from a meeting between Equilon Enterprises LLC ("Equilon"), a Shell affiliate, and CARB representatives on September 28, 1999, along with some handwritten notes on several of the slides. Most of the information in Exhibit D relates to the Phase 3 regulations. Two pages, however, contain confidential information about Shell's production capacities, finished product mixes and average summertime fuel properties at each of its three California refineries. (See Exhibit D, RX 578 at SHUNO-0003331 and 3332). This information could be used by competitors to disadvantage Shell in the marketplace. It would allow rivals to determine Shell's likely production volumes, and to adapt their production strategies to capitalize on any shortfalls.

8. Exhibits E-H all contain the same presentation materials concerning a February 24, 1998 meeting between Equilon personnel and CARB staff to discuss ways to increase refiner flexibility under the Phase 3 regulations. For example, Exhibit E (RX 1015; SHUNO-0004705 to 4723) contains several slides that discuss general issues concerning CARB's Phase 3 regulations. Five pages, however, contain commercially sensitive information about Shell's production capacities at its three California refineries, their blending limitations, gasoline pool descriptions and the impact of MTBE on those pools. (See Exhibit E, RX 1015 at SHUNO-0004708, 4712, 4713, 4718 and 4719). The same details reflected in these pages from Exhibit E also appear in nearly identical pages

in Exhibits F-H.¹ This information is highly valuable and unique to the Shell refineries. Its disclosure could permit competitors to employ operating strategies to Shell's economic disadvantage in the marketplace. For example, rivals that currently exchange certain blendstocks with Shell on an arm's length basis could charge inflated prices if they knew the details of Shell's pool requirements.

9. Exhibit I (RX 584; SHUNO-0004496 to 4497) contains confidential e-mail communications between Shell regulatory and refinery personnel concerning a meeting between CARB officials and Shell employees about potential Phase 3 requirements. This communication was intended for the internal use of specific Shell personnel. In particular, the second page of the document discusses particular blending constraints, production trade-offs and logistical limitations of Shell's Martinez Refinery in adapting to changes required by CARB's Phase 3 regulations. (See Exhibit I, RX 584 at SHUNO-0004497). Exhibit I contains descriptions of how Shell operates at Martinez today. If this information were disclosed to third parties or competitors of Shell, it could cause serious harm to Shell's business.

10. Exhibit J (RX 353; SHUNO-0001537 to 38) also contains confidential e-mail communications between Shell refinery personnel concerning blending methods and constraints at the Martinez Refinery. The information in this document was intended exclusively for Shell personnel involved in blending gasoline for compliance with CARB requirements. In particular, the document discusses the key gasoline property limitations faced by the Martinez facility, its current and future blendstock needs and detailed statistics about individual blending formulations. The current operations at the Martinez Refinery reflect the blending methods and requirements identified in Exhibit J. Disclosure of this confidential production information to third parties or competitors of Shell could cause serious economic harm to Shell.

11. Exhibits K-N are a series of confidential e-mail communications between Shell refinery personnel regarding blending instructions and practices at Texaco's, and now Shell's, California refineries.² The detailed discussion in these documents was intended exclusively for Shell personnel for use in their blending operations, and is commercially sensitive. Specifically, Exhibits K and L contain information about modeling gasoline blends to comply with CARB specifications and avoid overlap with Unocal patent claims. These two documents discuss blending trade secrets, gasoline pool components and supply needs, and marketing requirements for finished products. Exhibits M and N reflect specific blending instructions and production methods, and contain details about the key blending constraints faced by Shell's California refineries. If the information in Exhibits K-N were known to Shell's competitors or suppliers, it could be exploited to the significant business disadvantage of Shell. Many of the same methods and limitations referred to in these e-mail messages apply to Shell's current gasoline blending practices.

¹ See Exhibit F, RX 587 at SHUNO-0004320, 4324, 4325, 4330 and 4331; Exhibit G, RX 576 at SHUNO-0002596, 2600, 2601, 2606 and 2607; and Exhibit H, RX 205 at SHUNO-0001478, 1483, 1484 and 1487.

² See Exhibit K (RX 1028; SHUNO-0006039 to 6040); Exhibit L (RX 1029; SHUNO-0006037 to 6038); Exhibit M (RX 1030; SHUNO-0006032); and Exhibit N (RX 1016; SHUNO-0004703 to 4704).

12. Exhibits O-T contain details about modifications to Shell refineries, and to specific process units at those refineries, that were made to facilitate production of reformulated gasoline in compliance with current CARB regulations. These documents were prepared by Shell personnel for internal review and approval by Shell management, and include highly sensitive and commercially valuable information.

13. In particular, Exhibit O (RX 217; SHUNO-0000056 to 57) is an executive summary, and Exhibits P and Q (RX 218, SHUNO-0001040 to 1098; and RX 352, SHUNO-0001040 to 1098) are identical copies of a management presentation, concerning the entire Clean Fuels Program modifications at Shell's Los Angeles Refinery. The capital appropriations requested in these documents were approved by Shell executives and the modifications were implemented at the Los Angeles facility to comply with CARB's Phase 3 regulatory requirements. Exhibit O contains information about Shell's internal rate of return calculations for the proposed refinery modification project, and Exhibits P and Q include Shell's detailed economic analysis of the overall project from implementation in 2000 to completion in 2003, specific process unit investments, and strategic alternatives that were evaluated in the analysis. (See Exhibits P and Q, RX 218 and RX 352 at SHUNO-0001059 and SHUNO-0001070 to 1073). The management presentation also identifies the gasoline marketing strategy (SHUNO-0001044), pricing plans (SHUNO-0001045), blending strategies (SHUNO-0001046), specific supply and demand conditions (SHUNO-0001049) and profit margins (SHUNO-00010451) of the Los Angeles Refinery. Moreover, this document contains detailed descriptions of how key pieces of capital equipment at the refinery will be configured, the impact these modifications will have on specific gasoline components and production volumes, and the financial costs and benefits of these improvements.

14. Exhibits R-T reflect Shell's confidential economic analysis – including rate of return information – for modifications to critical process units at the Los Angeles Refinery to improve its distillation processes. Exhibit R (RX 534; SHUNO-0002239 to 2240) is an appropriation request with detailed financial information about project expenses and incremental production costs on a cents per gallon basis. Exhibit S (RX 535; SHUNO-0001793 to 1795) describes the process unit modifications in detail and quantifies their impact on production volumes of key blending streams. Exhibit T (RX 1027; SHUNO-0006042 to 6043) outlines the production objectives of the project and describes particular manufacturing constraints at the refinery. Each of these documents was prepared for the exclusive use of Shell's refinery management and planning personnel, and reflects competitively sensitive information about production capabilities at the Los Angeles Refinery.

15. The information in Exhibits O-T is highly material to current operations at the Los Angeles refinery. It reflects the strategic planning and implementation of refinery modifications that determine Shell's production capacities and limitations, manufacturing costs and marketing position at this facility. Disclosure of this information could cause serious and irreparable harm to Shell, because a competitor with knowledge of the information contained in these documents could use it to adapt their business strategy to take advantage of any limitations in the Los Angeles Refinery's capabilities.

16. Exhibits U and V (RX 205A, SHUNO-0001669 to 1673; and RX 206A, SHUNO-0001647 to 1663) are compliance plans submitted by Equilon to CARB for the proposed refinery modification projects at all three of Shell's California refineries. These documents are clearly designated as "Confidential and Proprietary: Trade Secret Information." Information in these documents was prepared exclusively for submission to CARB pursuant to current regulatory requirements. The transmittal letters for each compliance plan expressly request that these documents be protected from public disclosure, as they reflect Shell's confidential and proprietary trade secret information.

17. The information in Exhibits U and V discusses specific process unit modifications at Shell's California refineries. In addition, Exhibit V contains detailed process flow diagrams for each Shell refinery. (See Exhibit V, RX 206A at SHUNO-0001653 to 1655). It also outlines the manufacturing purposes for changes to each process unit included in the project. (See Exhibit V, RX 206A at SHUNO-0001651). Most importantly, both documents contain a chart showing the impact of these modifications on current year (2003) production volumes for specific finished products at each of the Shell refineries. (See Exhibit U, RX 205A at SHUNO-0001673; and Exhibit V, RX 206A at SHUNO-0001652). This information is highly material to Shell's current operations and future market position in the manufacture of CARB Phase 3 gasoline. If it were disclosed to competitors, Shell would be exposed to serious economic harm.

18. Exhibit W (RX 429; SHUNO-0004409 to 4419) is a draft Cross-Immunity Agreement between Shell and Chevron U.S.A., Inc., along with an e-mail message dated May 28, 2002 between corporate counsel for the parties to the proposed Agreement. This document was created for the exclusive use and confidential discussions of the parties to the Agreement. Within Shell, the information contained in Exhibit W is known to only a small number of personnel, specifically those involved in developing and negotiating the proposed Agreement. Shell has devoted substantial business and legal resources to the development of Exhibit W, and to its efforts to negotiate the terms of the Agreement with Chevron U.S.A., Inc. Disclosure of the proposed Cross-Immunity Agreement is likely to result in serious competitive injury to Shell. Other parties with whom Shell wishes to negotiate similar agreements could use the terms contained in Exhibit W to their advantage, and to the detriment of Shell, when negotiating the terms of their own agreements with Shell. In addition, disclosure of Exhibit W could interfere with the parties' confidential negotiations and endanger the execution of the proposed Agreement, thus causing Shell serious business injury.

19. Exhibit X contains two portions of the deposition transcript of Robert Millar, Business Manager of Shell's Los Angeles Refinery. I am informed that Mr. Millar's deposition testimony was taken by Respondent's Counsel in this matter on June 24, 2003. It is also my understanding that Shell's counsel has designated this entire transcript as "Confidential" under the Protective Order in this matter. The first portion of the transcript in Exhibit X contains Mr. Millar's discussion of blending rules and methods currently used at the Los Angeles Refinery for manufacturing CARB gasoline, and includes references to specific blending targets and parameters. (Millar Tr. at page 28, line 22 through page 33, line 12). The second portion deals with Shell's investments in particular capital projects at this facility. (Millar Tr. at page 52, line 25 through page 55, line 21). It contains discussion of the CARB Phase 3 modifications at the refinery and specific performance improvements as a result of the changes implemented during the project, which was just completed this year. More importantly, Mr. Millar testified about an even more recent capital project at the Los Angeles Refinery. The timing, capital cost and purpose of this ongoing project is discussed in the transcript, and this information is highly confidential and commercially sensitive to Shell. Public disclosure of this information could enable Shell's competitors to improve their own refinery processes in similar ways but with substantially lower capital costs than those incurred at the Los Angeles Refinery, to the detriment of Shell's economic position.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this _____ day of October, 2003, in _____.

Brian P. Smith

**TABS A – X
REDACTED**