

The Federal Trade Commission strongly favors making available to the public the full record of its adjudicative proceedings to permit public evaluation of the fairness of the Commission's work and to provide guidance to persons affected by its actions. *In re Crown Cork & Seal Co., Inc.*, 71 F.T.C. 1714, 1714-15 (1967); *Hood*, 58 F.T.C. at 1186 (“[T]here is a substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.”). A heavy burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Hood*, 58 F.T.C. at 1188. Further, requests for indefinite *in camera* treatment must include evidence to provide justification as to why the document should be withheld from the public's purview in perpetuity and why the requestor believes the information is likely to remain sensitive or become more sensitive with the passage of time. *See DuPont*, 1990 FTC LEXIS 134, at *2. Thus, in order to sustain the heavy burden for withholding documents from the public record, an affidavit or declaration demonstrating that a document is sufficiently secret and material to the applicant's business that disclosure would result in serious competitive injury is required. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at *2-3 (Apr. 23, 2004). The parties and non-parties have been advised of this requirement. Protective Order, ¶ 13. Requests for *in camera* treatment shall be made only for those pages of documents or of deposition transcripts that contain information that meets the *in camera* standard.

As set forth below, each of the non-parties filed separate motions for *in camera* treatment that complied with the standards for granting *in camera* treatment. Each motion was supported by an affidavit or declaration of an individual within the company who had reviewed the documents. These affidavits or declarations provided the necessary support to demonstrate that the documents meet the *in camera* treatment standards. Each motion attached the documents or deposition testimony for which *in camera* treatment was sought. From the broad lists of confidential documents that the parties provided to the non-parties indicating their intent to introduce at trial, each non-party significantly narrowed the scope of documents for which it sought *in camera* treatment. Where *in camera* treatment for deposition testimony was sought, the non-parties narrowed their requests to specific page and line numbers. The specific motions of each of the non-parties are addressed below.

II.

Non-party BP America Inc. (“BP”), on October 20, 2003 and October 24, 2003, filed motions seeking *in camera* treatment for twelve documents and portions of nine pages of deposition transcripts. The information for which *in camera* treatment is sought includes technology agreements, detailed technical and economic analyses of production, batch data for CARB summertime gasoline, blending strategies, production plans, and capital investment strategies. BP seeks *in camera* treatment for a period of five years.

BP's motions provide declarations of Patrick E. Gower, Refining Vice President – U.S. Region, BP Products North America Inc. (“Gower Declarations”). As described by the Gower

Declarations, the documents for which *in camera* treatment is sought are not available to BP's competitors and disclosure of these documents could cause serious competitive injury to BP.

In addition, BP seeks *in camera* treatment for portions of nine pages of the depositions of Gary Youngman, conducted on June 25, 2003 and August 7, 2003. BP has submitted a narrow request for only certain pages and line numbers of these depositions.

A review of the declarations in support of the motions, the excerpts of the deposition testimony, and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, BP's motions are GRANTED. *In camera* treatment, for a period of five years, to expire on November 1, 2009, is granted to:

CX 1731, BPUNO-0001423 to 1427
CX 778, BPUNO-0001428 to 1432
CX 2166, BPUNOBD-0000001 to 27
CX 1781, BPUNOBD-00000028 to 37
RX 455, BPUNO-0001581 to 1595
RX 658, BPUNO-0002591 to 2603
RX 667, BPUNO-0001422 to 1427
RX 1048, BPUNO-0009107
RX 1052, BPUNO-0009136 to 9188
RX1053, BPUNO-0009137 to 9139
RX 1056, BPUNO-0009591 to 9593
RX 1066, BPUNO-0009601 to 9606

Youngman 06/25/03 deposition: page 54, lines 2 through 21

Youngman 08/07/03 deposition: 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

III.

Non-parties Shell Oil Company, Equilon Enterprises LLC d/b/a/ Shell Oil Products (US) and Motiva Enterprises LLC (collectively "Shell"), on October 17, 2003 and October 24, 2003, filed motions seeking *in camera* treatment for thirty documents and portions of several pages of deposition testimony. The information for which *in camera* treatment is sought includes business planning related to research, development, and deployment of certification technology, the impact of CARB Phase 3 requirements, blending methods and requirements, refinery modifications and investments, compliance plans, batch data for CARB summertime gasoline, and technology agreements. Shell has submitted a narrow request for only certain page and line numbers of the depositions of Robert Millar, Ron Banducci, Steve Hancock, and David Jacober. Shell seeks *in camera* treatment for a period of five years.

Shell's motions provide declarations from Brian P. Smith, Director of Manufacturing and Marketing, Base Oils and Specialty Products, at Shell Oil Products United States ("Smith Declaration") and Fran S. Bove, Business Team Manager, Fuels Business Group, at Shell Global Solutions US Inc. ("Bove Declaration"). As described by the Smith and Bove Declarations, the documents for which *in camera* treatment is sought contain highly sensitive information, the disclosure of which could cause serious competitive injury to Shell. The Smith and Bove Declarations demonstrate that the documents for which Shell seeks *in camera* treatment have not been disclosed outside of Shell with two limited exceptions.

In addition, Shell seeks *in camera* treatment for portions of the depositions of Millar, Banducci, Hancock, and Jacober. Shell has submitted a narrow request for only certain page and line numbers of these depositions.

A review of the declarations in support of the motions, the documents, and the deposition testimony reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Shell's motions are GRANTED. *In camera* treatment for a period of five years, to expire on November 1, 2009, is granted to:

RX 1033, SHUNO-0006021 to 6030
RX 220, SHUNO-0002591 to 2592
RX 585, SHUNO-0004675 to 4676
RX 578, SHUNO-0003328 to 3340
RX 1015, SHUNO-0004705 to 4723
RX 587, SHUNO-0004317 to 4335
RX 576, SHUNO-0002593 to 2611
RX 205, SHUNO-0001473 to 1488
RX 584, SHUNO-0004496 to 4497
RX 353, SHUNO-0001537 to 1538
RX 1028, SHUNO-0006039 to 6040
RX 1029, SHUNO-0006037 to 6038
RX 1030, SHUNO-0006032
RX 1016, SHUNO-0004703 to 4704
RX 217, SHUNO-0000056 to 57
RX 218, SHUNO-0001040 to 1098
RX 352, SHUNO-0001040 to 1098
RX 534, SHUNO-0002239 to 2240
RX 535, SHUNO-0001793 to 1795
RX 1027, SHUNO-0006042 to 6043
RX 205A, SHUNO-0001669 to 1673
RX 206A, SHUNO-0001647 to 1663
RX 429, SHUNO-0004409 to 4419
RX 1055, SHUNO-0006773 to 6774
CX 2169, SHUNOBD-0000001 to 16

CX TBD, SHUNOBD-0000017 to 30
CX TBD, SHUNOBD-0000031 to 40
CX 1131, AG-SHELL-0000390 to 398
CX 1132, AG-SHELL-0000399 to 415
CX 1133, AG-SHELL-0000416 to 427
Millar 06/24/03 deposition: page 28, line 22 through page 33, line 12; and
page 52, line 25 through page 55, line 21
Banducci 08/07/03 deposition: page 46, line 2 through page 47, line 12
Hancock 09/05/03 deposition: page 193, line 22 through page 197, line 6; and
page 216, line 16 through page 222, line 17
Jacobson 08/20/03 deposition: page 33, line 8 through page 34, line 3; and page 45,
line 21 through page 46, line 20

IV.

Non-party Chevron U.S.A., Inc. ("Chevron"), on October 17, 2003 and October 24, 2003, filed motions seeking *in camera* treatment for eight documents and portions of pages of a deposition transcript. The information for which *in camera* treatment is sought includes executed and draft technology agreements, detailed technical and economic analyses of production, batch data for CARB summertime gasoline, and specific capital investments. Chevron seeks *in camera* treatment for a period of five years.

Chevron's motions provide declarations of William Engibous, Manager, Business and Planning Operations, California Refining at Chevron U.S.A., Inc. ("Engibous Declarations"). As described by the Engibous Declarations, distribution of the documents for which *in camera* treatment is sought has been limited to the parties involved and disclosure of these documents could cause serious competitive injury to Chevron.

In addition, Chevron seeks *in camera* treatment for portions of five pages of the deposition of William Engibous conducted on August 5, 2003. Chevron has submitted a narrow request for only certain pages and line numbers of this deposition.

A review of the declarations in support of the motions, the excerpts of the deposition testimony, and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Chevron's motions are GRANTED. *In camera* treatment, for a period of five years, to expire on November 1, 2009, is granted to:

RX 245, CHUNO-0000312 to 316
RX 246, CHUNO-0001115 to 1120
RX 1041, CHUNO-0001748 to 1759
CX 2074, CHUNO-0000283 to 287
CX 2075, CHUNO-0000305 to 310
CX 2076, CHUNO-0000317 to 337

CX 2167, CHUNOBD-0000001 to 17
CX 1782, CHUNOBD-0000018 to 21
Engibous 08/05/03 deposition: page 51, line 19 through page 52, line 11; page
57, line 20 through page 58, line 13; and page 70, lines 9 through 20

V.

Non-party ExxonMobil Inc. ("ExxonMobil"), on October 17, 2003 and October 24, 2003, filed motions seeking *in camera* treatment for twenty-four documents and portions of pages of one deposition transcript. The information for which *in camera* treatment is sought includes proposed technology agreements, presentation and planning documents related to on-line certification technology, certification of on-line analyzer technology, internal business planning documents, future plans for blending gasoline, batch data for CARB summertime gasoline, and cost estimates. ExxonMobil seeks *in camera* treatment for a period of five years.

ExxonMobil's motions provide declarations of Thomas Eizember, Manager for Global Planning Support in the Planning and Project Execution organization of ExxonMobil Refining and Supply Company ("Eizember Declarations"). ExxonMobil has demonstrated that disclosure of the documents for which *in camera* treatment is sought has been limited to interested parties. As described by the Eizember Declarations, disclosure of the documents for which *in camera* treatment is sought would cause serious competitive injury to ExxonMobil.

In addition, ExxonMobil seeks *in camera* treatment for portions of ten pages of the deposition of Thomas Eizember conducted on August 14, 2003. ExxonMobil has submitted a narrow request for only certain pages and line numbers of this deposition.

A review of the declarations in support of the motions, the excerpts of the deposition testimony, and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, ExxonMobil's motions are GRANTED. *In camera* treatment, for a period of five years, to expire on November 1, 2009, is granted to:

RX 517, EXMOUNO-0018040 to 56
RX 571, EXMOUNO-0002897 to 2905
RX 204, EXMOUNO-0002897 to 2905
RX 977, EXMOUNO-0000100 to 141
RX 1021, EXMOUNO-0021358 to 59
CX 2079, EXMOUNO-0000142 to 178
CX 2080, EXMOUNO-0000179 to 216
CX 2081, EXMOUNO-0000217 to 257
CX 2082, EXMOUNO-0000258 to 265
CX 2083, EXMOUNO-0000266 to 273
CX 2084, EXMOUNO-0000274 to 282
CX 2087, EXMOUNO-0000451 to 458

CX 2078, EXMOUNO-0000058 to 099
CX 2086, EXMOUNO-0000350 to 392
CX 1706, EXMOUNO-0000001 to 057
CX 1745, EXMOUNO-0018435 to 444
CX 2098, EXMOUNO-0004867 to 868
CX 2088, EXMOUNO-0000938 to 943
RX 1073, EXMOUNO-0023944 to 946
CX 2095, EXMOUNO-0004460 to 464
CX 2092, EXMOUNO-0002779 to 844
RX 1098, EXMOUNO-0024851 to 853
CX 2168, EXMOUNOBD-0000001 to 010
CX 1783, EXMOUNOBD-0000011 to 015

Eizember 08/14/03 deposition: page 56, lines 17 through 22; page 71, line 23 through page 72, line 8; page 76, line 17 through page 77, line 17; page 99, line 14 through page 101, line 12; and page 104, line 23 through page 105, line 23

VI.

Non-party Valero Energy Corporation Inc. (“Valero”), on October 17, 2003, filed a motion seeking *in camera* treatment for fourteen documents. The information for which *in camera* treatment is sought falls into three general categories: CARB II compliance, CARB III compliance, and production and process records. Valero seeks *in camera* treatment for a period of fifteen years.

Valero’s motion provides a declaration from William E. Stoner, legal counsel for Valero and Martin E. Loeber, Vice President of Complex Legal Projects and Dispute Management for various Valero entities (“Loeber Declaration”). As described by the Loeber Declaration, the documents for which *in camera* treatment is sought contain highly competitive and extremely valuable information, the disclosure of which could cause serious competitive injury to Valero. The Loeber Declaration demonstrates that the documents for which Valero seeks *in camera* treatment have only been disclosed as part of this proceeding with a “confidential” designation and have been circulated to only a small number of Valero’s employees.

A review of the declarations in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. However, Valero has not demonstrated circumstances for extending *in camera* treatment for a period of fifteen years. Accordingly, Valero’s motion is GRANTED in part and DENIED in part. *In camera* treatment, for a period of ten years, to expire on November 1, 2014, is granted to:

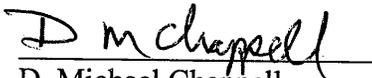
CX 820, VALFTC-0010750 to 11041
CX 821, VALFTC-0011132 to 11164
CX 822, VALFTC-0011043 to 11120

CX 823, VALFTC-0017604 to 17635
CX 824, VALFTC-0017484 to 17603
CX 825, VALFTC-0017386 to 17483
CX 826, VALFTC-0016548 to 16659
CX 827, VALFTC-0011369 to 11625
CX 828, VALFTC-0011240 to 11367
CX 829, VALFTC-0011175 to 11239
CX 2211, 1 to 80
CX 2212, 1 to 113
RX 278, VALFTC-0048773 to 48780
RX 279, VALFTC-0048746 to 48754

VII.

Each non-party that has documents or information that have been granted *in camera* treatment by this Order shall inform its testifying current or former employees that *in camera* treatment has been extended to the material described in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: October 7, 2004