

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

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

**NON-PARTY EXXONMOBIL'S THIRD MOTION FOR *IN CAMERA* TREATMENT OF  
HEARING EXHIBITS DESIGNATED BY COMPLAINT COUNSEL**

Non-party ExxonMobil Corporation ("ExxonMobil") moves for an order directing *in camera* treatment of two documents that Complaint Counsel designated in a letter dated October 15, 2004, for possible introduction at the hearing that began on October 19, 2004. Public disclosure of either of these documents, or the information contained in them, is likely to cause direct, serious harm to ExxonMobil's competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(g), ExxonMobil 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 and B.

**EXXONMOBIL'S CONFIDENTIAL INFORMATION DESERVES *IN CAMERA*  
TREATMENT UNDER THE FEDERAL TRADE COMMISSION'S  
RULES OF PRACTICE**

ExxonMobil is not a party to this proceeding. The information in Exhibits A and B is fundamental to ExxonMobil's current gasoline refining operations, particularly its refinery in Torrance, California. ExxonMobil has guarded the confidentiality of these materials carefully. Public disclosure of these documents could result in serious competitive injury to ExxonMobil, while adding little, if any, incremental value to the public's understanding of the issues in this

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

**A. ExxonMobil Has Preserved The Confidentiality Of Its Information**

ExxonMobil has taken meaningful steps to protect the confidential nature of each document for which it seeks protection. In particular, ExxonMobil has designated these materials “Restricted Confidential – Attorney Eyes Only” under the Protective Order in this matter.

**B. Disclosure Of The Information In Exhibits A and B Could Result In Serious Competitive Injury To ExxonMobil**

The information for which ExxonMobil 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, respectively, 2003 and 2004 batch data for CARB summertime gasoline. ExxonMobil designated these documents “Restricted Confidential – Attorney Eyes Only” because they specify the summertime gasoline properties, characteristics and volumes for the Torrance Refinery. Public access to ExxonMobil’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 ExxonMobil in the marketplace.

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

ExxonMobil 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.* ExxonMobil has cooperated with the discovery

demands in this case, and has taken steps to facilitate access of the parties to highly sensitive non-party documents. Conversely, publicly revealing Exhibits A and B 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 and B. See *In re Bristol-Myers*, 90 F.T.C. 455, 456 (1977) (describing six-factor test for determining secrecy and materiality). Significantly, in an order issued October 7, 2004 in this proceeding, documents containing ExxonMobil batch data from earlier time periods were afforded *in camera* protection. See Order on Non-Parties' Motion for *In Camera* Treatment of Documents Listed on Parties' Exhibit Lists, p. 7, (granting *in camera* treatment to, among other documents, Exhibits CX2168 and CX1783). The more recent batch data reflected in Exhibits A and B certainly should similarly be protected from disclosure.

**D. Protection For Exhibits A-B Should Extend For Five Years**

The value to ExxonMobil's business of the information contained in Exhibits A and B warrants lasting protection to prevent the Torrance Refinery's competitors from learning exactly what it produces at any given time, as well as year-to-year. Accordingly, ExxonMobil requests that, as with its other information granted *in camera* treatment in the October 7 order, Exhibits A and B retain *in camera* status for five years.

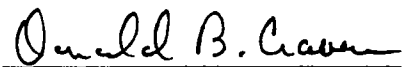
**CONCLUSION**

Exhibits A and B satisfy the standard for *in camera* protection under the Commission's Rules of Practice and relevant FTC rulings. Accordingly, *in camera* protection should be extended to this confidential information of ExxonMobil. We have conferred with Complaint

Counsel and counsel for Unocal about this Motion and the specific materials for which *in camera* protection is sought, and they both have indicated that they do not oppose this Motion.

DATED: October 24, 2004

Respectfully submitted,



Donald B. Craven  
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 )  
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UNION OIL COMPANY OF CALIFORNIA, ) Docket No. 9305  
)  
a corporation. )  
)

[PROPOSED] ORDER

Upon consideration of Non-Party ExxonMobil's Unopposed Third 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	PRODUCTION BATES NUMBERS
A	EXMOUNOBD-0000016 to 22
B	EXMOUNOBD-0000023 to 29

The Honorable D. Michael Chappell  
Administrative Law Judge

## CERTIFICATE OF SERVICE

I certify that on October 29, 2004, I caused an original and two copies of Non-Party ExxonMobil's Unopposed Third 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 29, 2004, I caused two copies of the foregoing motion to be served by hand delivery and 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 29, 2004, 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

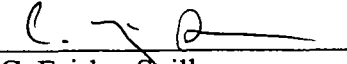
Chong S. Park, Esq.  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue, NW, Rm. NJ-6213  
Washington, DC 20001

I also certify that on October 29, 2004, I also caused one copy of the foregoing motion to be served by hand delivery upon:

David W. Beehler, Esq.  
Robins, Kaplan, Miller & Ciresi, LLP

with an additional copy by overnight mail to:

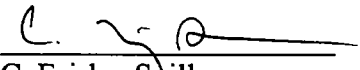
Diane L. Simerson  
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800 LaSalle Avenue  
Minneapolis, MN 55402-2015

  
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 EXXONMOBIL'S THIRD 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 29, 2004

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



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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\_\_\_\_\_)

DECLARATION OF THOMAS R. EIZEMBER IN SUPPORT OF  
EXXONMOBIL'S THIRD MOTION FOR *IN CAMERA* TREATMENT

I, Thomas R. Eizember, declare as follows:

1. I am a Senior Planning Advisor in the Corporate Planning Department for Exxon Mobil Corporation ("ExxonMobil"). In that capacity, my responsibilities include business planning activities involving all of the worldwide assets of ExxonMobil and its affiliates, including ExxonMobil Oil Corporation's refinery in Torrance, California.
2. ExxonMobil is not a party to the captioned matter.
3. The documents for which ExxonMobil seeks *in camera* treatment, attached as Exhibits A-B hereto, are identified as:

Exhibit	Production Bates Numbers
A	EXMOUNO-0000016 to 22
B	EXMOUNO-0000023 to 29


4. I have reviewed the documents for which ExxonMobil seeks *in camera* treatment. As Senior Planning Advisor, I am familiar with the type of information contained in those documents. I am also generally familiar with the confidentiality protection afforded this type of information by ExxonMobil. Based upon my review of these documents, my knowledge of ExxonMobil's business, and my familiarity with the confidentiality protection that ExxonMobil affords information of this type, it is my belief that public disclosure of these documents or the information contained in them would cause serious competitive injury to ExxonMobil.

**Exhibits**

5. Exhibits A (EXMOUNOBD-0000016 to 022) and B (EXMOUNOBD-0000023 to 29) are spreadsheets containing detailed volumetric, compositional and property information for individual batches of CARB summertime gasoline produced in 2003 and 2004 at the Torrance Refinery. I understand that these "batch data" documents were designated "Restricted Confidential – For Attorney Eyes Only" pursuant to the Protective Order in this matter before being produced to Unocal and the FTC. They contain highly confidential and commercially sensitive information about specific production volumes, the particular numerical properties and characteristics of those volumes and the methods by which those properties and characteristics are measured at the Torrance Refinery.

6. Disclosure of Exhibit A or B could cause real and serious damage to the competitive position of ExxonMobil. Persons with access to the information contained in these documents would have the ability to determine certain production capacities, blending formulations and blendstock requirements of the Torrance Refinery, and could use this information to disadvantage ExxonMobil in any number of ways, such as when negotiating exchange agreements contemplating blendstock purchases or sales, or competing for customers. Moreover, this knowledge could permit suppliers or customers of the Torrance Refinery to advantageously adjust their business strategies for CARB summertime gasoline and related products to the serious economic disadvantage of ExxonMobil.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 21<sup>st</sup> day of October, 2004, in IRVING, TEXAS.

  
\_\_\_\_\_  
Thomas R. Eizember

**TABS A – B  
REDACTED**