

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

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

**NON-PARTY CHEVRON’S SECOND MOTION FOR *IN CAMERA* TREATMENT OF
HEARING EXHIBITS DESIGNATED BY COMPLAINT COUNSEL**

Non-party Chevron U.S.A., Inc. (“Chevron”) moves for an order directing *in camera* treatment of six exhibits designated by Complaint Counsel for possible introduction at the hearing scheduled to begin on December 16, 2003.

Complaint Counsel notified Chevron on September 24, 2003 of 101 exhibits that may contain sensitive information belonging to Chevron entities. On October 23, 2003, Complaint Counsel added one item from the Chevron subpoena production to its exhibit list. Chevron has identified six exhibits from this list for *in camera* protection.¹ Public disclosure of one or more of these exhibits 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 information identified in the Declaration in support of this Motion, and attached thereto as Exhibits A-F.

¹ By motion filed October 20, 2003, Chevron sought *in camera* protection for certain documents identified by Unocal.

**CHEVRON'S CONFIDENTIAL INFORMATION DESERVES *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-F is fundamental to Chevron's current gasoline refining operations, particularly its refineries in Richmond and El Segundo, California. Chevron has guarded the confidentiality of these materials carefully. Public disclosure of these exhibits 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-F 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 Information

Chevron 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. Chevron designated its materials "Confidential" or "Restricted Confidential – Attorney Eyes Only" under the Protective Order and pursuant to an agreement between Chevron 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, 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-C. All these efforts show that Chevron has preserved the confidentiality of its materials.

B. Disclosure Of The Information In Exhibits A-F 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 future competitive position. As explained in the attached Declaration, Exhibits A-C contain proposed or executed agreements between Chevron and other refiners that permit both parties to employ each other's technologies for clean fuels without fear of injunctions or oppressive royalty payments. Disclosure of these documents could damage Chevron's ability to negotiate other such mutually beneficial agreements. In the case of the proposed agreements (Exhibits B and C), disclosure could also prevent the parties from reaching resolution. Exhibits D and E contain batch data for CARB summertime gasoline. Chevron designated these documents "Restricted Confidential – Attorney Eyes Only" because they specify the properties, characteristics and volumes for its California refineries. Public access to Chevron's batch data would expose the refineries to asymmetrical business relations with customers, suppliers and competitors – all of whom could use this information to harm Chevron in any number of ways. Finally, the deposition testimony in Exhibit F discusses specific capital investments made at the El Segundo Refinery in connection with CARB Phase 3 requirements, and the impact these upgrades will have on future production and refinery economics. (CARB Phase 3 refers to the gasoline specifications that are used currently at some refineries, and which are mandated for 2004). This Exhibit also contains information about particular operating strategies and process changes made or considered at the Richmond Refinery relating to CARB Phase 3. Disclosing Chevron's current and future operating strategies,

investment plans and refinery economics could seriously impair its ability to compete on equal terms with other refiners in the marketplace under the CARB Phase 3 regulations.

C. The Public Interest In Disclosure Of Exhibits A-F 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, publicizing Chevron’s private agreements, revealing its refineries’ detailed output characteristics and volumes, and disclosing its confidential operating strategies for success in the CARB Phase 3 environment 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-F. *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-F Should Extend For Five Years

The value of the agreements contained in Exhibits A-C to Chevron’s business warrants lasting protection. Similarly, the batch data in Exhibits D and E should remain confidential for a substantial amount of time to prevent Chevron’s peers from learning exactly what it produces at any given time, as well as year-to-year. Finally, the deposition excerpts in Exhibit F discussing Chevron’s operational strategies, capital investments and refinery economics call for strong protection to ensure that Chevron can compete equally against other refiners under the coming

CARB Phase 3 regime. Chevron respectfully requests that all of these materials be afforded *in camera* protection for a period of five years.

CONCLUSION

Exhibits A-F 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 Chevron. We have conferred with Complaint Counsel about this Motion and the specific information for which *in camera* protection is sought, and they do not oppose this Motion.

DATED: October 24, 2003

Respectfully submitted,

Donald B. Craven
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[PROPOSED] ORDER

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

Exhibit	CX	Production Bates Numbers
A	2074	CHUNO-0000283 to 287
B	2075	CHUNO-0000305 to 310
C	2076	CHUNO-0000317 to 337
D	2167	CHUNOBD-0000001 to 17
E	1782	CHUNOBD-0000018 to 21
F	Engibous Deposition Transcript 8/5/03	Page 51, line 19 through page 52, line 11. Page 57, line 20 through page 58, line 13. Page 70, lines 9 through 20.

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 Chevron's Unopposed Second Motion For In Camera Treatment Of Hearing Exhibits Designated By Complaint Counsel 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 CHEVRON'S SECOND MOTION FOR *IN CAMERA* TREATMENT OF HEARING EXHIBITS DESIGNATED BY COMPLAINT COUNSEL 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