

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

BP America is not a party to this proceeding. The information in Exhibits A-C is fundamental to BP's current gasoline refining operations, particularly its refinery in Carson, California. BP has guarded the confidentiality of these documents carefully. Public disclosure of these materials would result in serious competitive injury to BP America, 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. BP America Has Preserved The Confidentiality Of Its Documents

BP America 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. BP designated Exhibits A and B as "Restricted Confidential – Attorney Eyes Only" under the Protective Order prior to providing them to Unocal. BP designated Exhibit C as "Confidential" under the Protective Order pursuant to an agreement between BP 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. Finally, BP America 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 Exhibit C. All these efforts show that BP America has preserved the confidentiality of Exhibits A-C.

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

The information for which BP America 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, Exhibits A and B contain detailed technical and economic analyses of the means by which BP has chosen to optimize current production of CARB Phase 3 gasoline at its refinery in Carson, California. (CARB Phase 3 refers to the gasoline specifications that are used currently at some refineries, and which are mandated for 2004). Disclosure of these documents could allow a competitor to determine BP America's cost structure, capacity constraints and supply needs. A rival could use this information opportunistically during supply and demand swings that expose the Carson Refinery's particular limitations, resulting in serious and irreparable harm to BP America. Exhibit C is an agreement between BP America and another large refiner that permits both 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 this document could damage BP America's ability to negotiate other such mutually beneficial agreements.

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

BP America 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.* BP 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 two documents reflecting BP America's confidential operating strategies, and revealing another document that contains a private agreement, 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

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 Exhibits A and B to BP America's current operations and competitive position, BP America respectfully requests that these documents be afforded *in camera* protection for a period of five years. Similarly, the value of the Agreement contained in Exhibit C to BP America's business warrants lasting protection. BP America 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 BP America.

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
AKIN GUMP STRAUSS HAUER &
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1333 New Hampshire Ave., NW
Washington, DC 20036

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

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

[PROPOSED] ORDER

Upon consideration of Non-Party BP America'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	455	BPUNO-0001581 to -1595
B	658	BPUNO-0002591 to -2603
C	667	BPUNO-0001422 to -1427

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 BP America'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.
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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 BP AMERICA'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