

A. BP America Has Preserved The Confidentiality Of Its Information

BP America has taken meaningful steps to protect the confidential nature of each document for which it seeks protection. In particular, BP 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 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 future competitive position. As explained in the attached Declaration, Exhibits A and B contain, respectively, 2003 and 2004 batch data for CARB summertime gasoline. BP designated these documents “Restricted Confidential – Attorney Eyes Only” because they specify gasoline properties, characteristics and volumes for the Carson and, for 2004, Cherry Point, refineries. Public access to BP’s batch data would expose the refineries to asymmetrical business relations with their customers, suppliers and competitors – all of whom could use this information to harm BP in the marketplace.

C. The Public Interest In Disclosure Of Exhibits A and B 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 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 BP batch data from earlier time periods were afforded *in camera* protection. See Order on Non-Parties' Motions for *In Camera* Treatment of Documents Listed on Parties' Exhibit Lists, p. 3, (granting *in camera* treatment to, among other documents, CX2166 and CX1781). The more recent batch data reflected in Exhibits A and B certainly should similarly be protected from disclosure.

D. Protection For Exhibits A and B Should Extend For Five Years

The value of the information contained in Exhibits A and B to BP America's business warrants lasting protection to prevent competitors from learning exactly what BP produces at its Carson and Cherry Point refineries at any given time, as well as year-to-year. Accordingly, BP 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.

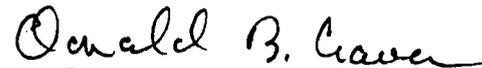
CONCLUSION

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 BP America. We have conferred with Complaint

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

DATED: October 21 2004

Respectfully submitted,

A handwritten signature in cursive script that reads "Donald B. Craven".

Donald B. Craven
AKIN GUMP STRAUSS HAUER &
FELD, LLP
1333 New Hampshire Ave., NW
Washington, DC 20036

CERTIFICATE OF SERVICE

I certify that on October 29, 2004, I caused an original and two copies of Non-Party BP America'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 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

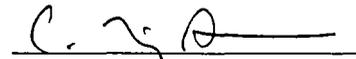
Chong S. Park, Esq.
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, NW, Rm. NJ-6213
Washington, DC 20001

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
Robins, Kaplan, Miller & Ciresi, LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

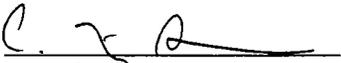


C. Fairley Spillman
AKIN GUMP STRAUSS HAUER
& FELD LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036

COPY CERTIFICATION

I certify that the electronic version of NON-PARTY BP'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

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

DECLARATION OF PATRICK E. GOWER IN SUPPORT OF
BP AMERICA'S THIRD
MOTION FOR *IN CAMERA* TREATMENT

I, Patrick E. Gower, declare as follows:

1. I am Refining Vice President – U.S. Region, BP Products North America Inc. (“BP Products”). In that capacity, I am familiar with the refining operations of BP West Coast Products, LLC (“BP West Coast”), the BP entity that operates the Carson and Cherry Point refineries. BP Products and BP West Coast are affiliates of BP America Inc. (“BP America”).

2. BP America, BP Products and BP West Coast (collectively referred to herein as “the BP entities” or “BP”) are not parties to the captioned matter.

3. The documents for which the BP entities seek *in camera* treatment, attached as Exhibits A and B hereto, are identified as:

Exhibit	Production Bates Numbers
A	BPUNOBD-0000038 to 49
B	BPUNOBD-0000050 to 62

4. I have reviewed the documents (Exhibits A and B) for which the BP entities seek *in camera* treatment. As Refining Vice President – U.S. Region, 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 the BP entities. Based upon my review of these documents, my knowledge of the BP entities’ business, and my familiarity with the confidentiality protection that the BP entities afford 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 BP America and/or BP West Coast.

Exhibits

5. Exhibit A (BPUNOBD-0000038 to 49) is a spreadsheets containing detailed volumetric, compositional and property information for individual batches of CARB summertime gasoline produced in 2003 at BP West Coast's Carson refinery. Exhibit B (BPUNOBD-0000050 to 62) is a similar spreadsheet for individual batches of CARB summertime gasoline produced in 2004 at the Carson refinery and BP West Coast's Cherry Point refinery. I understand that these "batch data" documents were designated "Restricted Confidential – 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 refineries.

6. Disclosure of Exhibit A or B could cause real and serious damage to the competitive position of BP West Coast. 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 Carson and Cherry Point refineries, and could use this information to disadvantage BP West Coast in any number of ways, such as when negotiating exchange agreements or competing for customers. Moreover, this knowledge could permit suppliers or customers of the Carson and Cherry Point refineries to advantageously adjust their business strategies for CARB summertime gasoline and related products to the serious economic disadvantage of BP.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27th day of October, 2004, in

Miami, FL.



Patrick E. Gower

**EXHIBITS A – B
REDACTED**