

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

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

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

Non-parties Shell Oil Company, Equilon Enterprises LLC d/b/a/ Shell Oil Products (US) and Motiva Enterprises LLC (collectively “Shell”) move 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 Shell’s competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(g), Shell 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 and B.

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

Shell is not a party to this proceeding. The information in Exhibits A and B is fundamental to Shell’s current gasoline refining operations, particularly its refineries in Los Angeles, Martinez and Bakersfield, California. Shell has guarded the confidentiality of these materials carefully. Public disclosure of these documents could result in serious competitive injury to Shell, 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. Shell Has Preserved The Confidentiality Of Its Information**

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

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

The information for which Shell 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. Shell designated these documents “Restricted Confidential – Attorney Eyes Only” because they specify the summertime gasoline properties, characteristics and volumes for Shell’s California refineries. Public access to Shell’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 Shell in the marketplace.

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

Shell 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.* Shell 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 Shell 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. 4-5, (granting *in camera* treatment for, among other documents, CX2169 and two batch data exhibits that had not been assigned exhibit numbers). 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 Shell's business of the information contained in Exhibits A and B warrants lasting protection to prevent Shell's competitors from learning exactly what it produces at any given time, as well as year-to-year. Accordingly, Shell 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.

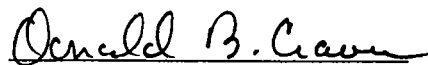
**CONCLUSION**

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 Shell. 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 29, 2004

Respectfully submitted,



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**

**UNION OIL COMPANY OF CALIFORNIA,**

**a corporation.**

**Docket No. 9305**

**[PROPOSED] ORDER**

Upon consideration of Non-Party Shell'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:

<b>Exhibit</b>	<b>Production Bates Numbers</b>
A	SHUNOBD-0000041 to 56
B	SHUNOBD-0000057 to 69

\_\_\_\_\_  
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 Shell'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

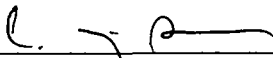
Chong S. Park, Esq.  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue, NW, Rm. NJ-6213  
Washington, DC 20001

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 SHELL'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	)	
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UNION OIL COMPANY OF CALIFORNIA,	)	Docket No. 9305
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**DECLARATION OF FRAN S. BOVE IN SUPPORT OF  
SHELL'S THIRD MOTION FOR *IN CAMERA* TREATMENT**

I, Fran S. Bove, declare as follows:

1. I am the Business Team Manager, Fuels Business Group, at Shell Global Solutions US Inc. My responsibilities in this position include fuel product technology development and support. Shell Global Solutions US Inc. performs work for Shell Oil Products United States ("Shell") and Motiva Enterprises LLC.
2. Shell is not a party to the captioned matter.
3. The documents for which Shell requests *in camera* protection, attached as Exhibits A and B hereto, are identified as:

<b>Exhibit</b>	<b>Production Bates Numbers</b>
A	SHUNOBD-0000041 to 56
B	SHUNOBD-0000057 to 69

4. I have reviewed the documents (Exhibits A and B) for which Shell seeks *in camera* treatment. As Business Team Manager, Fuels Business Group, I am familiar with the type of information contained in those documents and the purposes for which those documents are used in Shell's operations. I am also generally familiar with the confidentiality protection afforded this type of information by Shell. Based upon my review of these documents, my knowledge of Shell's business, and my familiarity with the confidentiality protection that Shell affords information of this type, it is my belief that public disclosure of these documents or the information contained in them could cause serious competitive injury to Shell.

## Exhibits

5. Exhibits A (SHUNOBD-0000041 to 56) and B (SHUNOBD-0000057 to 69) are spreadsheets containing detailed volumetric, compositional and property information for individual batches of CARB summertime gasoline produced in 2003 (Exhibit A) and 2004 (Exhibit B) at Shell's California refineries. 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 Shell's California refineries.

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

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 25<sup>th</sup> day of October, 2004, in Houston, Texas.



Fran S. Bove

**TABS A-B  
REDACTED**