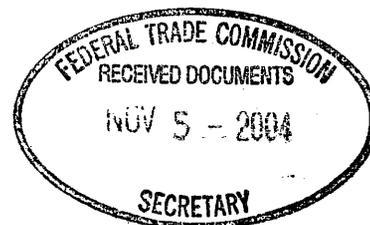


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



PUBLIC

In the Matter of
UNION OIL COMPANY OF CALIFORNIA, INC.
a corporation

DOCKET NO: 9305

**NON-PARTY VALERO ENERGY CORPORATION'S MOTION FOR
IN CAMERA TREATMENT OF ONE CONFIDENTIAL DOCUMENT**

I. INTRODUCTION

Non-Party Valero Energy Corporation ("Valero"), by and through undersigned counsel, moves pursuant to Section 3.45 of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), for an order directing *in camera* treatment for one additional highly confidential document from among the documents which Complaint Counsel or Respondent Union Oil Company of California ("Unocal") have recently identified as trial exhibits. As described more fully below and in the accompanying Declaration of Martin E. Loeber ("Loeber Decl."), the exhibit contains current, highly-sensitive, non-public information that would cause Valero serious competitive injury if published in this proceeding.

Complaint Counsel have stipulated to the *in camera* treatment of this document and do not oppose Valero's Motion for *In Camera* Treatment of this Confidential Document. (Declaration of William E. Stoner ["Stoner Decl."] ¶ 4.) Valero does not believe that Unocal will oppose this motion either. (Stoner Decl. ¶ 5.) *In Camera* Treatment of fourteen confidential documents previously was granted by Order dated October 7, 2004. See Stoner Decl. ¶ 3 & Ex. A (10/07/2004 Order On Non-Parties Motions For *In Camera* Treatment Of Documents Listed On Parties' Exhibit Lists) at 8-9.

The exhibit that is the subject of this Motion, referred to herein as the “Confidential Document,” has been identified as:

Trial Exhibit No.	Description	Bates Numbers
CX 2171	Blend Data for Valero’s Benicia and Wilmington California refineries	VAL FTC – 0050113 – 0052226

The Confidential Document contains six separate sub-documents, identified as follows:

Document Description	Bates Numbers
Wilmington Refinery, 01/01/03 – 12/31/03	VAL FTC – 0050113 – 0050562
Wilmington Refinery, 01/01/04 – 09/05/04	VAL FTC – 0050563 – 0050811
Benicia Refinery, 04/01/03 – 12/31/03	VAL FTC – 0050812 – 0051181
Benicia Refinery, 01/01/04 – 09/09/04	VAL FTC – 0051182 – 0051496
Benicia Refinery, 04/01/03 – 12/31/03	VAL FTC – 0051497 – 0051876
Benicia Refinery, 01/01/04 – 09/07/04	VAL FTC – 0051877 - 0052226

The Confidential Document that is the subject of the instant motion contains documents that are very similar to two of exhibits as to which Valero’s prior motion was granted. In the October 7, 2004 order, the Commission granted Valero’s motion for *in camera* treatment of Trial Exhibits 2211 and 2212. (Stoner Decl. Ex. A at 8). Exhibit 2211 was the Benicia Refinery Batch Data for 2000 through 2003. Exhibit 2212 was the Wilmington Refinery Batch Data for 1996 through 2003. Exhibit CX 2171 contains the same data for the same two refineries, but for different time periods. This motion concerning Exhibit CX 2171 should therefore be granted for the same reasons that the Commission granted Valerio’s prior motion with respect to Exhibits 2211 and 2212.

II. LEGAL STANDARD FOR *IN CAMERA* TREATMENT

The Confidential Document is entitled to *in camera* treatment as provided by Commission Rule 3.45(b), 16 C.F.R. § 3.45(b).

“There can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” *H.P. Hood & Sons, Inc.*, No. 7709, 58 F.T.C. 1184, 1186, 1961 FTC LEXIS 368, *4 (Mar. 14, 1961). As set forth in *In re General Foods Corp.*, Commission Rule 3.45(b) properly affords *in camera* treatment on a clear showing “that the information concerned is sufficiently secret and sufficiently material” to Valero’s business “that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, No. 9085, 95 F.T.C. 352, 1980 FTC LEXIS 99, *10 (Mar. 10, 1980).

The Commission weighs six factors in determining the secrecy and materiality of documents under Rule 3.45(b):

(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and other involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

In re Bristol-Myers Co., No. C-8917, 90 F.T.C. 455, 456-57, 1977 FTC LEXIS 25, *5 (Nov. 11, 1977) (citing Restatement of Torts § 757, cmt. b (1939)).

In addition, “a showing that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved” is also required. *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188, 1961 FTC LEXIS 368, *11. Within the context of this legal backdrop, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *Id.* Moreover, in the event of uncertainty as to whether the documents are entitled to *in camera* treatment, there is precedent

that such designation may preliminarily be made, subject to change at a later time. As explained in *In re Bristol-Myers Company*,

[T]he general and fundamental policy favoring government decisions based on publicly available facts may warrant different treatment for similar information depending upon the importance of the information to an understanding of the Commission's decisionmaking processes. Taking this approach, it may be reasonable in some cases, as Commission Rule 3.45(a) allows, for the law judge to grant *in camera* treatment for information at the time it is offered into evidence subject to a later determination by the law judge or the Commission that public disclosure is required in the interests of facilitating public understanding of their subsequent decisions.

In re Bristol-Myers Co., 90 F.T.C. 455, 457, 1977 FTC LEXIS 25, *6. Using these criteria, the Court should afford *in camera* treatment to the document in question so that Valero does not needlessly suffer serious competitive injury from its disclosure in this proceeding.

III. THE CONFIDENTIAL DOCUMENT SHOULD BE AFFORDED *IN CAMERA* TREATMENT

The Confidential Document for which Valero seeks *in camera* treatment contains Valero's production and process records for 2003 and 2004. It contains highly sensitive information that Valero needs to maintain in confidence. (Loeber Decl. ¶ 4.) For this document, the factors set forth above compel the conclusion that the document is secret and material within the meaning of the Commission's Rule 3.45(b) analysis.

A. Confidential Nature Of The Document.

The Confidential Document discloses specific blend data for production from Valero's California refineries. Disclosure of this information would be highly damaging because it would inform competitors of exactly what blends Valero's refineries are capable of making. This information is so sensitive that the FTC almost certainly would not permit sharing of this type of information at this level of detail between competitors as evidenced by the need to create "clean teams," which were strictly isolated from their respective companies when Valero announced its merger with Ultramar Diamond Shamrock in May 2001. (Loeber Decl. ¶ 5.)

The document and the information contained therein is highly sensitive and confidential. For Valero to successfully compete in this market it needs to maintain the confidentiality of its refinery operations. (Loeber Decl. ¶ 6.)

The document in question is the essence of the competitive information that Valero seeks to shield from public disclosure. The disclosure of Valero's competitive information, both to the public and to Valero's competitors, will negatively impact Valero's ability to compete and cause it serious economic injury in the marketplace. Moreover, there is no countervailing public interest that militates against maintaining Valero's confidences. Valero is not a party to this proceeding. Valero is a third-party witness whose documents may be called upon to assist the fact finder's understanding of the marketplace that the government believes was subjected to anti-competitive behavior by Unocal. No public purpose will be advanced by disclosing Valero's confidential information to other companies in the marketplace. Such disclosure will only serve to impede Valero's ability to compete and impair its flexibility to meet the challenges of the marketplace and comply with CARB regulations in a competitive manner. (Loeber Decl. ¶ 7.)

B. The Confidential Document Discloses Proprietary Information, Including Blend Data.

The Confidential Document details exactly what constraints Valero faces at its refineries in Benicia and Wilmington, California, in connection with the Company's efforts to comply with California's CARB III regulations. It discloses specific compliance options based on particular refinery gasoline pool constraints, and information regarding the competitive abilities of Valero's other refineries outside of California. Access to this information would enable competitors to precisely understand Valero's strengths and weaknesses in the marketplace and would therefore put Valero at a severe competitive disadvantage. Specifically, Exhibit CX 2171 contains confidential information showing specific blend data for production from Valero's California refineries. Disclosure of this information would be highly damaging because it would inform

competitors of exactly what blends Valero's refineries are capable of making. (Loeber Decl. ¶ 8.)

The information detailed in this document is known only by Valero and, to the best of Valero's knowledge, those parties to whom such documents have been disclosed pursuant to the terms of the confidentiality order in this FTC proceeding. (Loeber Decl. ¶ 9.)

Within Valero's own corporate structure, this information is circulated to only a small number of company employees. Specifically, this information is disclosed only to those who are involved in structuring, planning, implementing or evaluating the procedures and processes outlined in the Confidential Document. (Loeber Decl. ¶ 10.)

Valero enforces a strict confidentiality policy and aggressively attempts to prevent the dissemination of any of the information contained in this document to external sources. In pursuing these efforts, Valero takes great steps in protecting its confidential information. (Loeber Decl. ¶ 11.)

Disclosure of the Confidential Document would allow Valero's competitors to analyze and study Valero's processes, plans and production procedures and to identify Valero's future business planning and production strategies, all to Valero's severe detriment. The Confidential Document contains secret information that is material to Valero's business, competitiveness and profitability. Release of this information will cause the loss of business advantage and serious and irreparable injury to Valero. (Loeber Decl. ¶ 12.)

Disclosure of the Confidential Document would result in serious and irreparable competitive injury to Valero without serving any countervailing public purpose. The Confidential Document has been designated "confidential" and treated by all the relevant parties as confidential during the entirety of this proceeding. (Loeber Decl. ¶ 13.)

Complaint Counsel have confirmed they do not oppose *in camera* treatment of this Confidential Document. (Stoner Decl. ¶ 4.) Valero believes that Unocal will not oppose this motion either. (Stoner Decl. ¶ 5).

In camera protection of the Confidential Document is warranted for a period of not less than ten (10) years. The Confidential Document discloses information that will not only seriously impair Valero's ability to compete now in the market, but also seriously injure Valero's future business, planning, production, compliance and marketing strategies. These processes, production strategies and CARB compliance challenges are multi-million dollar issues. As such, the processes, production and CARB compliance information in the Confidential Document will be critically sensitive and proprietary for at least ten years. (Loeber Decl. ¶ 14.)

IV. THE ELEMENTS OF THE *BRISTOL-MYERS/HOOD* TEST HAVE BEEN SATISFIED AND THE CONFIDENTIAL DOCUMENT IS THEREFORE ENTITLED TO *IN CAMERA* TREATMENT

Great efforts have been taken by Valero to guard the secrecy of the document for which Valero now seeks *in camera* treatment. *Cf. In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-57, 1977 FTC LEXIS 25, *5. This document is not already a matter of public record. To the extent any of it has been disclosed to third parties, Valero has done so only upon first procuring assurances of confidentiality. (Loeber Decl. ¶ 9.) This document has limited circulation within Valero. Loeber Decl. ¶ 9; *see In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-57, 1977 FTC LEXIS 25, *5. Only designated individuals with a "need to know" have access to it. (Loeber Decl. ¶ 9.)

The information contained in the Confidential Document is not stale and is still significant today. To the extent that certain information concerning Valero's processes may be older, such information is still used to extrapolate current business operations, strategies and/or decision-making rationale. Similarly, to the extent the document relates to production and blending strategies, the information contained therein is still sensitive and is worthy of protection today. *In re Kaiser Aluminum & Chem. Corp.*, No. 9080, 103 F.T.C. 500, 1984 FTC LEXIS 60, *2 (May 25, 1984) (holding that material that is over five years old is still extremely sensitive and deserving of *in camera* protections because "a serious injury would be done them by release of this information, which they have never made available to the public").

The time and effort expended to create the information contained in this document has been significant. The value to Valero of the information in the documents is extremely high, as the document reflects Valero's business judgments and strategies on many levels. (Loeber Decl. ¶ 12.)

It would be extremely difficult and probably even impossible for Valero outsiders to replicate or develop this information on their own. It is not available from other sources either, since Valero has never released this information to a third party without obtaining assurances of confidentiality. *Cf. In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-57, 1977 FTC LEXIS 25, *5.

The public interest would not be served by making the Confidential Document a matter of public record. Particularly, the document fails to bear any relationship to consumers or other members of the public at large. The information would, however, be highly valuable to Valero's competitors in the marketplace and as a business matter, would significantly prejudice Valero's legitimate commercial interests. Loeber Decl. ¶ 14; *see also In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 1984 FTC LEXIS 60, *2 (holding that certain documents warranted *in camera* treatment on grounds that public understanding of the proceedings did not depend upon public access to the documents). Certainly, public understanding of this proceeding does not depend upon knowledge of Valero's secret production and processing information. *Id.*

Finally, irreparable injury to Valero would ensue if the information contained in this document were disclosed to the public. *See H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188, 1961 FTC LEXIS 368, *13-14. As demonstrated above, much of the information would be invaluable to Valero's competitors and would provide them with an improper business advantage. Disclosure of the document would allow Valero's competitors unfairly to reap the benefits of Valero's investment, research and business expertise. (Loeber Decl. ¶ 12.) Public disclosure of the document would result in injury to Valero without serving any countervailing public purpose. (Loeber Decl. ¶ 13.)

As noted above, Exhibit CX 2171 contains the same type of Batch Data for the Wilmington and Benicia refineries as was contained in Exhibits 2211 and 2212, except that the data in CX 2171 refers to different, more recent, time periods. (Stoner Decl. Ex. A at 8.) Valero's instant motion concerning Exhibit CX 2171 should therefore be granted for the same reasons that Valero's prior motion was granted with respect to Exhibits 2211 and 2212.

V. THE CONFIDENTIAL DOCUMENT SHOULD BE AFFORDED *IN CAMERA* TREATMENT FOR A PERIOD OF TEN YEARS

The Confidential Document requires *in camera* treatment for ten years. See 16 C.F.R. § 3.45(b)(3); *In re General Foods Corp.*, 95 F.T.C. 352, 1980 FTC LEXIS 99, *6 n.4 (Mar. 10, 1980) (noting that *in camera* treatment may be granted indefinitely or for a period of years). This was the period granted in Valero's prior motion. See 10/07/2004 Order On Non-Parties Motions For *In Camera* Treatment Of Documents Listed On Parties' Exhibit Lists (Stoner Decl. Ex. A) at 7-8. Since Valero intends to comply with CARB II and CARB III requirements indefinitely into the future, information pertaining to its production processes and strategies will remain sensitive for quite some time. A period of ten years is an appropriate length of time for *in camera* protection for the documents containing this type of confidential information. (Loeber Decl. ¶ 14.)

Despite the fact that "there is a presumption that *in camera* treatment will not be provided to information that is three or more years old," *In re Dura Lube Corp.*, No. 9292, 1999 FTC LEXIS 255, *9 (1999) (citing *In re General Foods Corp.*, 95 F.T.C. 352, 353, 1980 FTC LEXIS 99 (Mar. 10, 1980)), the FTC has recognized that this presumption is rebuttable and, on numerous occasions, has granted *in camera* protection to older documents depending on their contents. See *In re The Coca-Cola Co.*, No. 9207, 1990 FTC LEXIS 364, *4 (Oct. 17, 1990) (noting that a three-year standard is sometimes used, but holding that the age of a particular document offers "little guidance" as to whether *in camera* treatment is warranted; instead it is the actual justification for the treatment that matters); *In re Kaiser Aluminum & Chem. Corp.*, 103

F.T.C. 500, 1984 FTC LEXIS 60, *2 (extending protection to information over five years of age related to “sales of specific lines of refractories and related products”); *In re E.I. DuPont de Nemours & Co.*, No. 9108, 97 F.T.C. 116, 1981 FTC LEXIS 91, *4 (1981) (protecting 6-year-old “investment, earnings, profit, operative return and cost information” related to the sales).

Ten years for the Confidential Document is the most reasonable solution. *See In re The Coca-Cola Co.*, No. 9207, 1990 FTC LEXIS 364, *7 (noting that while the sensitivity of various documents may decrease over time at different rates, it is “sensible to treat all documents consistently” for purposes of *in camera* treatment). Non-disclosure of this information over the next ten years will prevent Valero’s competitors from learning about and taking advantage of Valero’s secret and vital business plans and strategies, as well as some of its most sensitive and important production data. Certainly, the general public can have little, if any, legitimate interest over the next fifteen years in this information. Moreover, even if there were any public interest here, it would be heavily outweighed by the serious injury Valero would suffer from disclosure.

With respect to Exhibits 2211 and 2212, the Commission granted *in camera* treatment for a period of ten years. (Stoner Decl. Ex. A at 8.) Exhibit CX 2171 should be afforded the same ten-year protection for the same reasons.

It is possible that one or more of the parties to this proceeding will seek to elicit and introduce testimony from Valero employees, including Victor H. Ibergs, Robert J. Simonson or Diane Sinclair, concerning the Confidential Document and/or the information contained therein. Valero therefore seeks *in camera* treatment for all such testimony to the extent that it reveals confidential and proprietary information belonging to Valero. Such protection is warranted for such testimony for the same reasons set forth above with respect to the Confidential Document itself and the information contained therein.

VI. CONCLUSION

For the foregoing reasons, Valero respectfully requests that the information in the Confidential Document identified above be given *in camera* treatment, be kept confidential, and

not be placed on the public record of this proceeding. This information meets the criteria for *in camera* treatment set forth in controlling FTC precedent, and therefore, should be accorded such protection.

DATED: November 4, 2004

Respectfully submitted,
HENNIGAN, BENNETT & DORMAN LLP

By: 

William E. Stoner

601 South Figueroa Street, #3300
Los Angeles, California 90017
Phone: (213)694-1200
Fax: (213) 624-1234

Attorneys for Third Party
Valero Energy Corporation

CERTIFICATE OF SERVICE

I declare as follows:

I certify that on November 4, 2004, I caused an original and two copies of the **NON-PARTY VALERO ENERGY CORPORATION'S MOTION FOR *IN CAMERA* TREATMENT OF ONE CONFIDENTIAL DOCUMENT** to be served and one electronic copy U.S. Mail and Federal Express with:

Donald S. Clark
Secretary
Federal Trade Commissions
600 Pennsylvania Ave., NW Rm. H-159
Washington, DC 20580

I also certify that on November 4, 2004, I caused one copy of the foregoing motion to be served by U.S. Mail and Federal Express upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

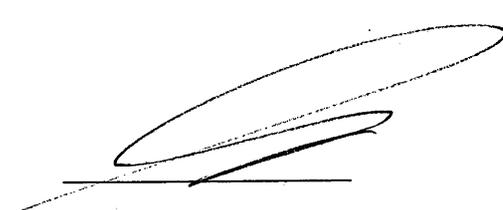
I also certify that on November 4, 2004November 4, 2004, I caused one copy of the foregoing motion to be served by U.S. Mail and Federal Express upon each person listed below:

J. Robert Robertson, Esq.
Senior Litigation Counsel
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Richard B. Dagen
(through service upon)
Chong S. Park, Esq.
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave., NW Rm. NJ-6213

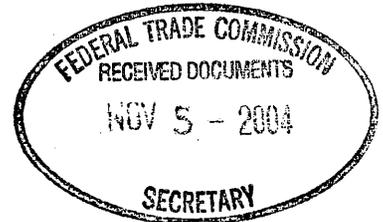
I also certify that on November 4, 2004, I caused one copy of the foregoing motion to be served by U.S. Mail and Federal Express upon:

David W. Beehler, Esq.
Diane Simerson, Esq.
Robins, Kaplan, Miller & Ciresi, LLP
2800 LaSalle Plaza
800 LaSalle Ave.
Minneapolis, MN 55402-2015



Elizabeth Dempsey

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



PUBLIC

In the Matter of

UNION OIL COMPANY OF CALIFORNIA, INC.
a corporation

DOCKET NO: 9305

PROPOSED ORDER

On November 4, 2004, Non-Party Valero Energy Corporation, Inc. ("Valero") filed a motion for *in camera* treatment of confidential business information contained in one document that Complaint Counsel or Union Oil Company of California ("Unocal") have identified as a potential trial exhibit. The exhibit has been identified as:

Trial Exhibit No.	Description	Bates Numbers
CX2171	Blend Data for Valero's Benicia and Wilmington California refineries	VAL FTC - 0050113 - 0052226

It contains six separate sub-documents, identified as follows:

Document Description	Bates Numbers
Wilmington Refinery, 01/01/03 - 12/31/03	VAL FTC - 0050113 - 0050562
Wilmington Refinery, 01/01/04 - 09/05/04	VAL FTC - 0050563 - 0050811
Benicia Refinery, 04/01/03 - 12/31/03	VAL FTC - 0050812 - 0051181
Benicia Refinery, 01/01/04 - 09/09/04	VAL FTC - 0051182 - 0051496
Benicia Refinery, 04/01/03 - 12/31/03	VAL FTC - 0051497 - 0051876
Benicia Refinery, 01/01/04 - 09/07/04	VAL FTC - 0051877 - 0052226

IT IS HEREBY ORDERED that Valero's Motion is GRANTED. The information set forth in the foregoing exhibit will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding for the following time period:

Trial Exhibit No.	Description	Bates Numbers	Duration
CX2171	Blend Data for Valero's Benicia and Wilmington California refineries	VAL FTC – 0050113 – 0052226	Ten (10) years

IT IS FURTHER ORDERED that only authorized Federal Trade Commission (“Commission”) personnel, and court personnel concerned with judicial review, may have access to the above-referenced information, provided that I, the Commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

ORDERED:

Date: _____

D. Michael Chappell
Administrative Law Judge

CERTIFICATE OF SERVICE

I declare as follows:

I certify that on November 4, 2004, I caused an original and two copies of the **PROPOSED ORDER IN SUPPORT OF NON-PARTY VALERO ENERGY CORPORATION, INC.'S MOTION FOR *IN CAMERA* TREATMENT OF ONE CONFIDENTIAL DOCUMENT** to be served via U.S. Mail and Federal Express and one electronic copy with:

Donald S. Clark
Secretary
Federal Trade Commissions
600 Pennsylvania Ave., NW Rm. H-159
Washington, DC 20580

I also certify that on November 4, 2004, I caused one copy of the foregoing motion to be served by U.S. Mail and Federal Express upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

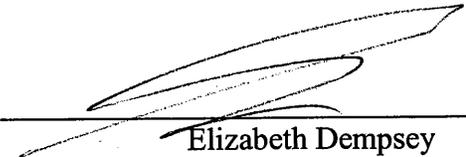
I also certify that on November 3, 2004, I caused one copy of the foregoing motion to be served by U.S. Mail and Federal Express upon each person listed below:

J. Robert Robertson, Esq.
Senior Litigation Counsel
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

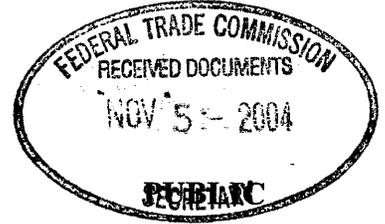
Richard B. Dagen
(through service upon)
Chong S. Park, Esq.
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave., NW Rm. NJ-6213

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David W. Beehler, Esq.
Diane Simerson, Esq.
Robins, Kaplan, Miller & Ciresi, LLP
2800 LaSalle Plaza
800 LaSalle Ave.
Minneapolis, MN 55402-2015


Elizabeth Dempsey

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of

UNION OIL COMPANY OF CALIFORNIA, INC.
a corporation

DOCKET NO: 9305

DECLARATION OF WILLIAM E. STONER IN SUPPORT OF NON-PARTY VALERO ENERGY CORPORATION'S MOTION FOR *IN CAMERA* TREATMENT OF ONE CONFIDENTIAL DOCUMENT

I, WILLIAM E. STONER, declare and state as follows:

1. I am an attorney at law duly licensed to practice before all the Courts of the State of California. I am Of Counsel with the law firm of Hennigan, Bennett & Dorman LLP, attorneys of record for Non-Party Valero Energy Corporation ("Valero"). I am over the age of eighteen and competent to give testimony. I have personal knowledge of the facts stated below and if called upon to testify thereto, I could and would do so competently.

2. I make this Declaration in support of Non-Party Valero Energy Corporation's Motion for *In Camera* Treatment of One Confidential Document identified as follows:

Trial Exhibit No.	Description	Bates Numbers
CX2171	Blend Data for Valero's Benicia and Wilmington California refineries	VAL FTC - 0050113 - 0052226

This Confidential Document contains six separate sub-documents, identified as follows:

Document Description	Bates Numbers
Wilmington Refinery, 01/01/03 - 12/31/03	VAL FTC - 0050113 - 0050562
Wilmington Refinery, 01/01/04 - 09/05/04	VAL FTC - 0050563 - 0050811

Document Description	Bates Numbers
Benicia Refinery, 04/01/03 – 12/31/03	VAL FTC – 0050812 – 0051181
Benicia Refinery, 01/01/04 – 09/09/04	VAL FTC – 0051182 – 0051496
Benicia Refinery, 04/01/03 – 12/31/03	VAL FTC – 0051497 – 0051876
Benicia Refinery, 01/01/04 – 09/07/04	VAL FTC – 0051877 - 0052226

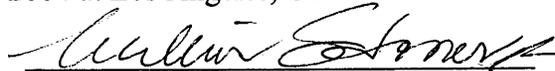
3. Previously, Valero filed a Motion For In Camera Treatment Of Fourteen Documents. On October 7, 2004, Administrative Law Judge D. Michael Chappell filed an order granting that motion and ordering *in camera* treatment for the fourteen subject documents for a period of ten years. Exhibit A is a true and correct copy of the October 7, 2004 order.

4. On November 4, 2004, I attempted to contact Ms. Diane L. Simerson, Esq., of Robins, Kaplan, Miller & Ciresi L.L.P., counsel of record for Union Oil Company of California ("Unocal") in FTC proceeding No. 9305. I was unable to reach Ms. Simerson, however, based on Unocal's non-opposition to the prior motion, I believe that Unocal will not oppose Valero's Motion for *in camera* treatment for Exhibit CX 2171 consisting of Bates range 0050013 to 0052226.

5. On November 4, 2004, I spoke by telephone with Ms. Peggy D. Bayer, Esq., of the FTC's Bureau of Competition Anticompetitive Practices Division regarding FTC proceeding No. 9305. Ms. Bayer confirmed to me that Complaint Counsel would not oppose Valero's Motion for *in camera* treatment for Exhibit CX 2171 consisting of Bates range 50013 to 52226.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 4th day of November 2004 at Los Angeles, California.



William E. Stoner

CERTIFICATE OF SERVICE

I declare as follows:

I certify that on November 4, 2004, I caused an original and two copies of the **DECLARATION OF WILLIAM E. STONER IN SUPPORT OF NON-PARTY VALERO ENERGY CORPORATION'S MOTION FOR *IN CAMERA* TREATMENT OF ONE CONFIDENTIAL DOCUMENT** to be served via U.S. Mail and Federal Express and one electronic copy with:

Donald S. Clark
Secretary
Federal Trade Commissions
600 Pennsylvania Ave., NW Rm. H-159
Washington, DC 20580

I also certify that on November 4, 2004, I caused one copy of the foregoing motion to be served by U.S. Mail and Federal Express upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW
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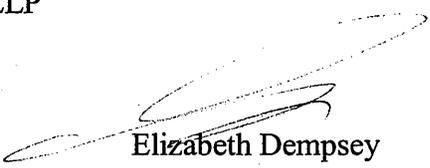
I also certify that on November 3, 2004, I caused one copy of the foregoing motion to be served by U.S. Mail and Federal Express upon each person listed below:

J. Robert Robertson, Esq.
Senior Litigation Counsel
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Richard B. Dagen
(through service upon)
Chong S. Park, Esq.
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Federal Trade Commission
601 New Jersey Ave., NW Rm. NJ-6213
Washington, DC 20580

I also certify that on November 4, 2004, I caused one copy of the foregoing motion to be served by U.S. Mail and Federal Express upon:

David W. Beehler, Esq.
Diane Simerson, Esq.
Robins, Kaplan, Miller & Ciresi, LLP
2800 LaSalle Plaza
800 LaSalle Ave.
Minneapolis, MN 55402-2015


Elizabeth Dempsey

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EXHIBIT A

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
UNION OIL COMPANY OF)
CALIFORNIA,)
Respondent.)

Docket No. 9305

ORDER ON NON-PARTIES' MOTIONS FOR *IN CAMERA* TREATMENT
OF DOCUMENTS LISTED ON PARTIES' EXHIBIT LISTS

I.

Pursuant to Commission Rule 3.45(b) and the Scheduling Order entered in this litigation, several non-parties have filed motions for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter.

In Commission proceedings, requests for *in camera* treatment must show that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984); *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the documentary evidence is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury," and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions. *Kaiser*, 103 F.T.C. at 500; *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Bristol Myers Co.*, 90 F.T.C. 455, 456 (1977).

Indefinite *in camera* treatment is granted only in those "unusual" cases where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. *In re Coca Cola Co.*, 1990 FTC LEXIS 364 (Oct. 17, 1990). Examples of documents meriting indefinite *in camera* treatment are trade secrets, such as secret formulas, processes, and other secret technical information, and information that is privileged. *See Hood*, 58 F.T.C. at 1189; *In re R.R. Donnelley & Sons Co.*, 1993 FTC LEXIS 32 (Feb. 18, 1993); *In re Textron, Inc.*, 1991 FTC LEXIS 135 (Apr. 26, 1991). Where *in camera* treatment is granted for ordinary business records, such as business plans, marketing plans, or sales documents, it is typically extended for two to five years. *E.g., In re E.I. DuPont de Nemours & Co.*, 97 F.T.C. 116 (1981); *In re Int'l Ass. of Conf. Interpreters*, 1996 FTC LEXIS 298 (June 26, 1996).

The Federal Trade Commission strongly favors making available to the public the full record of its adjudicative proceedings to permit public evaluation of the fairness of the Commission's work and to provide guidance to persons affected by its actions. *In re Crown Cork & Seal Co., Inc.*, 71 F.T.C. 1714, 1714-15 (1967); *Hood*, 58 F.T.C. at 1186 (“[T]here is a substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.”). A heavy burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Hood*, 58 F.T.C. at 1188. Further, requests for indefinite *in camera* treatment must include evidence to provide justification as to why the document should be withheld from the public's purview in perpetuity and why the requestor believes the information is likely to remain sensitive or become more sensitive with the passage of time. *See DuPont*, 1990 FTC LEXIS 134, at *2. Thus, in order to sustain the heavy burden for withholding documents from the public record, an affidavit or declaration demonstrating that a document is sufficiently secret and material to the applicant's business that disclosure would result in serious competitive injury is required. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at *2-3 (Apr. 23, 2004). The parties and non-parties have been advised of this requirement. Protective Order, ¶ 13. Requests for *in camera* treatment shall be made only for those pages of documents or of deposition transcripts that contain information that meets the *in camera* standard.

As set forth below, each of the non-parties filed separate motions for *in camera* treatment that complied with the standards for granting *in camera* treatment. Each motion was supported by an affidavit or declaration of an individual within the company who had reviewed the documents. These affidavits or declarations provided the necessary support to demonstrate that the documents meet the *in camera* treatment standards. Each motion attached the documents or deposition testimony for which *in camera* treatment was sought. From the broad lists of confidential documents that the parties provided to the non-parties indicating their intent to introduce at trial, each non-party significantly narrowed the scope of documents for which it sought *in camera* treatment. Where *in camera* treatment for deposition testimony was sought, the non-parties narrowed their requests to specific page and line numbers. The specific motions of each of the non-parties are addressed below.

II.

Non-party BP America Inc. (“BP”), on October 20, 2003 and October 24, 2003, filed motions seeking *in camera* treatment for twelve documents and portions of nine pages of deposition transcripts. The information for which *in camera* treatment is sought includes technology agreements, detailed technical and economic analyses of production, batch data for CARB summertime gasoline, blending strategies, production plans, and capital investment strategies. BP seeks *in camera* treatment for a period of five years.

BP's motions provide declarations of Patrick E. Gower, Refining Vice President – U.S. Region, BP Products North America Inc. (“Gower Declarations”). As described by the Gower

Declarations, the documents for which *in camera* treatment is sought are not available to BP's competitors and disclosure of these documents could cause serious competitive injury to BP.

In addition, BP seeks *in camera* treatment for portions of nine pages of the depositions of Gary Youngman, conducted on June 25, 2003 and August 7, 2003. BP has submitted a narrow request for only certain pages and line numbers of these depositions.

A review of the declarations in support of the motions, the excerpts of the deposition testimony, and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, BP's motions are GRANTED. *In camera* treatment, for a period of five years, to expire on November 1, 2009, is granted to:

CX 1731, BPUNO-0001423 to 1427
CX 778, BPUNO-0001428 to 1432
CX 2166, BPUNOBD-0000001 to 27
CX 1781, BPUNOBD-00000028 to 37
RX 455, BPUNO-0001581 to 1595
RX 658, BPUNO-0002591 to 2603
RX 667, BPUNO-0001422 to 1427
RX 1048, BPUNO-0009107
RX 1052, BPUNO-0009136 to 9188
RX1053, BPUNO-0009137 to 9139
RX 1056, BPUNO-0009591 to 9593
RX 1066, BPUNO-0009601 to 9606
Youngman 06/25/03 deposition: page 54, lines 2 through 21
Youngman 08/07/03 deposition: page 56, line 12 through page 57, line 4; page 73, line 10 through page 74, line 12; page 76, line 9 through page 77, line 5; and page 91, line 4 through page 92, line 12

III.

Non-parties Shell Oil Company, Equilon Enterprises LLC d/b/a/ Shell Oil Products (US) and Motiva Enterprises LLC (collectively "Shell"), on October 17, 2003 and October 24, 2003, filed motions seeking *in camera* treatment for thirty documents and portions of several pages of deposition testimony. The information for which *in camera* treatment is sought includes business planning related to research, development, and deployment of certification technology, the impact of CARB Phase 3 requirements, blending methods and requirements, refinery modifications and investments, compliance plans, batch data for CARB summertime gasoline, and technology agreements. Shell has submitted a narrow request for only certain page and line numbers of the depositions of Robert Millar, Ron Banducci, Steve Hancock, and David Jacober. Shell seeks *in camera* treatment for a period of five years.

Shell's motions provide declarations from Brian P. Smith, Director of Manufacturing and Marketing, Base Oils and Specialty Products, at Shell Oil Products United States ("Smith Declaration") and Fran S. Bove, Business Team Manager, Fuels Business Group, at Shell Global Solutions US Inc. ("Bove Declaration"). As described by the Smith and Bove Declarations, the documents for which *in camera* treatment is sought contain highly sensitive information, the disclosure of which could cause serious competitive injury to Shell. The Smith and Bove Declarations demonstrate that the documents for which Shell seeks *in camera* treatment have not been disclosed outside of Shell with two limited exceptions.

In addition, Shell seeks *in camera* treatment for portions of the depositions of Millar, Banducci, Hancock, and Jacober. Shell has submitted a narrow request for only certain page and line numbers of these depositions.

A review of the declarations in support of the motions, the documents, and the deposition testimony reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Shell's motions are GRANTED. *In camera* treatment for a period of five years, to expire on November 1, 2009, is granted to:

RX 1033, SHUNO-0006021 to 6030
RX 220, SHUNO-0002591 to 2592
RX 585, SHUNO-0004675 to 4676
RX 578, SHUNO-0003328 to 3340
RX 1015, SHUNO-0004705 to 4723
RX 587, SHUNO-0004317 to 4335
RX 576, SHUNO-0002593 to 2611
RX 205, SHUNO-0001473 to 1488
RX 584, SHUNO-0004496 to 4497
RX 353, SHUNO-0001537 to 1538
RX 1028, SHUNO-0006039 to 6040
RX 1029, SHUNO-0006037 to 6038
RX 1030, SHUNO-0006032
RX 1016, SHUNO-0004703 to 4704
RX 217, SHUNO-0000056 to 57
RX 218, SHUNO-0001040 to 1098
RX 352, SHUNO-0001040 to 1098
RX 534, SHUNO-0002239 to 2240
RX 535, SHUNO-0001793 to 1795
RX 1027, SHUNO-0006042 to 6043
RX 205A, SHUNO-0001669 to 1673
RX 206A, SHUNO-0001647 to 1663
RX 429, SHUNO-0004409 to 4419
RX 1055, SHUNO-0006773 to 6774
CX 2169, SHUNOBD-0000001 to 16

CX TBD, SHUNOBD-0000017 to 30
CX TBD, SHUNOBD-0000031 to 40
CX 1131, AG-SHELL-0000390 to 398
CX 1132, AG-SHELL-0000399 to 415
CX 1133, AG-SHELL-0000416 to 427
Millar 06/24/03 deposition: page 28, line 22 through page 33, line 12; and
page 52, line 25 through page 55, line 21
Banducci 08/07/03 deposition: page 46, line 2 through page 47, line 12
Hancock 09/05/03 deposition: page 193, line 22 through page 197, line 6; and
page 216, line 16 through page 222, line 17
Jacobson 08/20/03 deposition: page 33, line 8 through page 34, line 3; and page 45,
line 21 through page 46, line 20

IV.

Non-party Chevron U.S.A., Inc. ("Chevron"), on October 17, 2003 and October 24, 2003, filed motions seeking *in camera* treatment for eight documents and portions of pages of a deposition transcript. The information for which *in camera* treatment is sought includes executed and draft technology agreements, detailed technical and economic analyses of production, batch data for CARB summertime gasoline, and specific capital investments. Chevron seeks *in camera* treatment for a period of five years.

Chevron's motions provide declarations of William Engibous, Manager, Business and Planning Operations, California Refining at Chevron U.S.A., Inc. ("Engibous Declarations"). As described by the Engibous Declarations, distribution of the documents for which *in camera* treatment is sought has been limited to the parties involved and disclosure of these documents could cause serious competitive injury to Chevron.

In addition, Chevron seeks *in camera* treatment for portions of five pages of the deposition of William Engibous conducted on August 5, 2003. Chevron has submitted a narrow request for only certain pages and line numbers of this deposition.

A review of the declarations in support of the motions, the excerpts of the deposition testimony, and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Chevron's motions are GRANTED. *In camera* treatment, for a period of five years, to expire on November 1, 2009, is granted to:

RX 245, CHUNO-0000312 to 316
RX 246, CHUNO-0001115 to 1120
RX 1041, CHUNO-0001748 to 1759
CX 2074, CHUNO-0000283 to 287
CX 2075, CHUNO-0000305 to 310
CX 2076, CHUNO-0000317 to 337

CX 2167, CHUNOBD-0000001 to 17

CX 1782, CHUNOBD-0000018 to 21

Engibous 08/05/03 deposition: page 51, line 19 through page 52, line 11; page 57, line 20 through page 58, line 13; and page 70, lines 9 through 20

V.

Non-party ExxonMobil Inc. ("ExxonMobil"), on October 17, 2003 and October 24, 2003, filed motions seeking *in camera* treatment for twenty-four documents and portions of pages of one deposition transcript. The information for which *in camera* treatment is sought includes proposed technology agreements, presentation and planning documents related to on-line certification technology, certification of on-line analyzer technology, internal business planning documents, future plans for blending gasoline, batch data for CARB summertime gasoline, and cost estimates. ExxonMobil seeks *in camera* treatment for a period of five years.

ExxonMobil's motions provide declarations of Thomas Eizember, Manager for Global Planning Support in the Planning and Project Execution organization of ExxonMobil Refining and Supply Company ("Eizember Declarations"). ExxonMobil has demonstrated that disclosure of the documents for which *in camera* treatment is sought has been limited to interested parties. As described by the Eizember Declarations, disclosure of the documents for which *in camera* treatment is sought would cause serious competitive injury to ExxonMobil.

In addition, ExxonMobil seeks *in camera* treatment for portions of ten pages of the deposition of Thomas Eizember conducted on August 14, 2003. ExxonMobil has submitted a narrow request for only certain pages and line numbers of this deposition.

A review of the declarations in support of the motions, the excerpts of the deposition testimony, and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, ExxonMobil's motions are GRANTED. *In camera* treatment, for a period of five years, to expire on November 1, 2009, is granted to:

RX 517, EXMOUNO-0018040 to 56
RX 571, EXMOUNO-0002897 to 2905
RX 204, EXMOUNO-0002897 to 2905
RX 977, EXMOUNO-0000100 to 141
RX 1021, EXMOUNO-0021358 to 59
CX 2079, EXMOUNO-0000142 to 178
CX 2080, EXMOUNO-0000179 to 216
CX 2081, EXMOUNO-0000217 to 257
CX 2082, EXMOUNO-0000258 to 265
CX 2083, EXMOUNO-0000266 to 273
CX 2084, EXMOUNO-0000274 to 282
CX 2087, EXMOUNO-0000451 to 458

CX 2078, EXMOUNO-0000058 to 099
CX 2086, EXMOUNO-0000350 to 392
CX 1706, EXMOUNO-0000001 to 057
CX 1745, EXMOUNO-0018435 to 444
CX 2098, EXMOUNO-0004867 to 868
CX 2088, EXMOUNO-0000938 to 943
RX 1073, EXMOUNO-0023944 to 946
CX 2095, EXMOUNO-0004460 to 464
CX 2092, EXMOUNO-0002779 to 844
RX 1098, EXMOUNO-0024851 to 853
CX 2168, EXMOUNOBD-0000001 to 010
CX 1783, EXMOUNOBD-0000011 to 015

Eizember 08/14/03 deposition: page 56, lines 17 through 22; page 71, line 23 through page 72, line 8; page 76, line 17 through page 77, line 17; page 99, line 14 through page 101, line 12; and page 104, line 23 through page 105, line 23

VI.

Non-party Valero Energy Corporation Inc. ("Valero"), on October 17, 2003, filed a motion seeking *in camera* treatment for fourteen documents. The information for which *in camera* treatment is sought falls into three general categories: CARB II compliance, CARB III compliance, and production and process records. Valero seeks *in camera* treatment for a period of fifteen years.

Valero's motion provides a declaration from William E. Stoner, legal counsel for Valero and Martin E. Loeber, Vice President of Complex Legal Projects and Dispute Management for various Valero entities ("Loeber Declaration"). As described by the Loeber Declaration, the documents for which *in camera* treatment is sought contain highly competitive and extremely valuable information, the disclosure of which could cause serious competitive injury to Valero. The Loeber Declaration demonstrates that the documents for which Valero seeks *in camera* treatment have only been disclosed as part of this proceeding with a "confidential" designation and have been circulated to only a small number of Valero's employees.

A review of the declarations in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. However, Valero has not demonstrated circumstances for extending *in camera* treatment for a period of fifteen years. Accordingly, Valero's motion is GRANTED in part and DENIED in part. *In camera* treatment, for a period of ten years, to expire on November 1, 2014, is granted to:

CX 820, VALFTC-0010750 to 11041
CX 821, VALFTC-0011132 to 11164
CX 822, VALFTC-0011043 to 11120

CX 823, VALFTC-0017604 to 17635
CX 824, VALFTC-0017484 to 17603
CX 825, VALFTC-0017386 to 17483
CX 826, VALFTC-0016548 to 16659
CX 827, VALFTC-0011369 to 11625
CX 828, VALFTC-0011240 to 11367
CX 829, VALFTC-0011175 to 11239
CX 2211, 1 to 80
CX 2212, 1 to 113
RX 278, VALFTC-0048773 to 48780
RX 279, VALFTC-0048746 to 48754

VII.

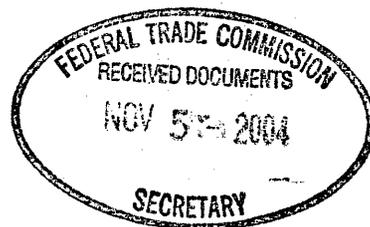
Each non-party that has documents or information that have been granted *in camera* treatment by this Order shall inform its testifying current or former employees that *in camera* treatment has been extended to the material described in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: October 7, 2004

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



PUBLIC

In the Matter of

UNION OIL COMPANY OF CALIFORNIA, INC.
a corporation

DOCKET NO: 9305

DECLARATION OF MARTIN E. LOEBER IN SUPPORT OF NON-PARTY VALERO ENERGY CORPORATION'S MOTION FOR *IN CAMERA* TREATMENT OF ONE CONFIDENTIAL DOCUMENT

I, MARTIN E. LOEBER, declare and state as follows:

1. I am over the age of eighteen and competent to give testimony. The information set forth below is based on my own personal knowledge, information and/or belief, and if called upon to testify thereto, I could and would do so competently.

2. I am the Vice President of Litigation for various Valero Energy Corporation ("Valero") entities and am entirely familiar with the document that is the subject of Valero's instant Motion for *In Camera* Treatment. Given Valero's substantial interest in protecting the confidentiality of this Confidential Document, which contains secret and commercially sensitive information, I am available to appear at a hearing to address any questions that the court may have relating to the contents of this document.

3. I make this declaration in support of Non-Party Valero's Motion for *In Camera* Treatment Of One Confidential Document. The exhibit, referred to herein as the "Confidential Document," has been identified as:

Trial Exhibit No.	Description	Bates Numbers
CX2171	Blend Data for Valero's Benicia and Wilmington California refineries	VAL FTC - 0050113 - 0052226

The Confidential Document contains six separate sub-documents, identified as follows:

Document Description	Bates Numbers
Wilmington Refinery, 01/01/03 – 12/31/03	VAL FTC – 0050113 – 0050562
Wilmington Refinery, 01/01/04 – 09/05/04	VAL FTC – 0050563 – 0050811
Benicia Refinery, 04/01/03 – 12/31/03	VAL FTC – 0050812 – 0051181
Benicia Refinery, 01/01/04 – 09/09/04	VAL FTC – 0051182 – 0051496
Benicia Refinery, 04/01/03 – 12/31/03	VAL FTC – 0051497 – 0051876
Benicia Refinery, 01/01/04 – 09/07/04	VAL FTC – 0051877 - 0052226

4. The Confidential Document for which Valero seeks *in camera* treatment contains Valero's production and process records for 2003 and 2004. It contains highly sensitive information that Valero needs to maintain in confidence.

5. The Confidential Document discloses specific blend data for production from Valero's Wilmington and Benicia, California refineries. Disclosure of this information would be highly damaging because it would inform competitors of exactly what blends Valero's refineries are capable of making. This information is so sensitive that the FTC almost certainly would not permit sharing of this type of information at this level of detail between competitors as evidenced by the need to create "clean teams," which were strictly isolated from their respective companies when Valero announced its merger with Ultramar Diamond Shamrock in May 2001.

6. The Confidential Document and the information contained therein is highly sensitive and confidential. For Valero to successfully compete in this market it needs to maintain the confidentiality of its refinery operations.

7. The Confidential Document is the essence of the competitive information that Valero seeks to shield from public disclosure. The disclosure of Valero's competitive information, both to the public and to Valero's competitors, will negatively impact Valero's ability to compete and cause it serious economic injury in the marketplace. Moreover, there is no countervailing public interest that militates against maintaining Valero's confidences. Valero

is not a party to this proceeding. Valero is a third-party witness whose documents may be called upon to assist the fact finder's understanding of the marketplace that the government believes was subjected to anti-competitive behavior by Unocal. No public purpose will be advanced by disclosing Valero's confidential information to other companies in the marketplace. Such disclosure will only serve to impede Valero's ability to compete and impair its flexibility to meet the challenges of the marketplace and comply with CARB regulations in a competitive manner.

8. The Confidential Document details exactly what constraints Valero faces at its refineries in Benicia and Wilmington, California, in connection with the Company's efforts to comply with California's CARB III regulations. It discloses specific compliance options based on particular refinery gasoline pool constraints, and information regarding the competitive abilities of Valero's other refineries outside of California. Access to this information would enable competitors to precisely understand Valero's strengths and weaknesses in the marketplace and would therefore put Valero at a severe competitive disadvantage. Specifically, Exhibit CX 2171 contains confidential information showing specific blend data for production from Valero's California refineries. Disclosure of this information would be highly damaging because it would inform competitors of exactly what blends Valero's refineries are capable of making.

9. The information detailed in this document is known only by Valero and, to the best of Valero's knowledge, those parties to whom such documents have been disclosed pursuant to the terms of the confidentiality order in this FTC proceeding.

10. Within Valero's own corporate structure, this information is circulated to only a small number of company employees. Specifically, this information is disclosed only to those who are involved in structuring, planning, implementing or evaluating the procedures and processes outlined in the Confidential Document.

11. Valero enforces a strict confidentiality policy and aggressively attempts to prevent the dissemination of any of the information contained in this document to external sources. In pursuing these efforts, Valero takes great steps in protecting its confidential information.

12. Disclosure of the Confidential Document would allow Valero's competitors to analyze and study Valero's processes, plans and production procedures and to identify Valero's future business planning and production strategies, all to Valero's severe detriment. The Confidential Document contains secret information that is material to Valero's business, competitiveness and profitability. Release of this information will cause the loss of business advantage and serious and irreparable injury to Valero.

13. Disclosure of the Confidential Document would result in serious and irreparable competitive injury to Valero without serving any countervailing public purpose. The Confidential Document has been stamped "confidential" and treated by all the relevant parties as confidential during the entirety of this proceeding.

14. *In camera* protection of the Confidential Document is warranted for a period of not less than ten (10) years. The Confidential Document discloses information that will not only seriously impair Valero's ability to compete now in the market, but also seriously injury Valero's future business, planning, production, compliance and marketing strategies. These processes, production strategies and CARB compliance challenges are multi-million dollar issues. As such, the processes, production and CARB compliance information in the Confidential Document will be critically sensitive and proprietary for at least ten years.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 4th day of November 2004 at San Antonio, Texas



Martin E. Loeber

CERTIFICATE OF SERVICE

I declare as follows:

I certify that on November 4, 2004, I caused an original and two copies of the **DECLARATION OF MARTIN E. LOEBER IN SUPPORT OF NON-PARTY VALERO ENERGY CORPORATION, INC.'S MOTION FOR *IN CAMERA* TREATMENT OF ONE CONFIDENTIAL DOCUMENT** to be served vi U. S. Mail and Federal Express and one electronic copy with:

Donald S. Clark
Secretary
Federal Trade Commissions
600 Pennsylvania Ave., NW Rm. H-159
Washington, DC 20580

I also certify that on November 4, 2004, I caused one copy of the foregoing motion to be served by U.S. Mail and Federal Express upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

I also certify that on November 4, 2004, I caused one copy of the foregoing motion to be served by U.S. Mail and Federal Express upon each person listed below:

J. Robert Robertson, Esq.
Senior Litigation Counsel
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Richard B. Dagen
(through service upon)
Chong S. Park, Esq.
Bureau of Competition
Federal Trade Commission
601 New Jersey Ave., NW Rm. NJ-6213

I also certify that on November 4, 2004, I caused one copy of the foregoing motion to be served by U.S. Mail and Federal Express upon:

David W. Beehler, Esq.
Diane Simerson, Esq.
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2800 LaSalle Plaza
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Minneapolis, MN 55402-2015


Elizabeth Dempsey