

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
WASHINGTON D.C.

In the Matter of

UNION OIL COMPANY OF CALIFORNIA,  
a corporation.

Docket No. 9305

**UNION OIL COMPANY OF CALIFORNIA’S OPPOSITION TO COMPLAINT  
COUNSEL’S REQUEST TO DELAY THE ISSUANCE OF SUBPOENAS  
TO THE ENVIRONMENTAL PROTECTION AGENCY AND  
THE CALIFORNIA AIR RESOURCES BOARD**

In a document styled as a response to the motions of Respondent Union Oil Company of California (“Unocal”) to subpoena documents from the United States Environmental Protection Agency (“EPA”) and California Air Resources Board (“CARB”), Complaint Counsel make an affirmative motion to Your Honor to stay a ruling on Unocal’s motion. Because Complaint Counsel’s motion is calculated to delay the very proceeding that Complaint Counsel seek to bring to an early hearing, the request should be denied.

At the conference before Your Honor on April 8, Complaint Counsel expressed eagerness to bring this matter to an early hearing and stated that they were prepared to try this matter as early as July. Complaint Counsel’s readiness to proceed on an expedited schedule is understandable, as Complaint Counsel have conducted a lengthy investigation with compulsory process to collect the evidence that they need even before initiating this proceeding. However, now that the matter is in litigation and Unocal for the first time has the ability to engage in discovery to obtain evidence that it needs for its defense, Complaint Counsel seek to delay the initiation of the discovery process.

Rather than facilitating expedition of the discovery process, Complaint Counsel waited until the last possible moment to respond to the motion and then asked for a stay of ruling. To assure the orderly and timely production of documents, Unocal is entitled to have the EPA and CARB search for and produce the requested documents or raise specific objections to their production. Under Complaint Counsel's suggestion, these agencies would be under no compulsion to produce documents and no procedure would be in place for assuring that any disputes could be resolved quickly by Your Honor.

As an example of the delay which will be caused by granting Complaint Counsel's request, Unocal's counsel attempted to request the voluntary production of witnesses by CARB on four specific topics. Unocal's counsel made it clear that these depositions should be noticed as quickly as possible and that they should not be delayed because of production of documents. CARB's response, through the California Department of Justice which represents it, was to assert that the Department of Justice is very busy and that no depositions could be scheduled for at least several weeks. *See* Ex. A to Complaint Counsel's Response. Unocal understands the need to accommodate counsel's schedules, but it is apparent that the discovery process will not move forward in a timely manner without the power of this Tribunal and the force of a subpoena.

Complaint Counsel purport to have no objections to the discovery sought by Unocal. That should be the end of the matter. Unocal should be authorized to issue the subpoenas that it is legally entitled to issue and to which Complaint Counsel have no objection. Unocal is prepared to work cooperatively with both the EPA and CARB to resolve any problems that may arise in the discovery process, but there is no reason for delaying the commencement of that process in a matter that is scheduled to proceed from Complaint to trial on the merits in a matter of a few short months.

Unocal has been accused of fraud in the development of CARB's regulations. The EPA and CARB's responses to document subpoenas and deposition testimony will help streamline discovery of other parties. These matters should not be delayed.

Dated: April 15, 2003.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: Original Signature on File with Commission

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ATTORNEYS FOR UNION OIL COMPANY OF  
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2003, I caused a copy of the attached Union Oil Company of California's Opposition To Complaint Counsel's Request To Delay The Issuance Of Subpoenas To The Environmental Protection Agency And The California Air Resources Board to be served upon the following persons :

The Honorable D. Michael Chappell (by hand)  
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