

**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 SECOND
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 Refinery. 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-J hereto, are identified as:

Exhibit	CX	Production Bates Numbers
A	1731	BPUNO-0001423 to 1427
B	0778	BPUNO-0001428 to 1432
C	2166	BPUNOBD-0000001 to 27
D	1781	BPUNOBD-0000028 to 37
E	Deposition Transcripts of Gary Youngman, 6/25/03 and 8/7/03	Page 54, lines 2 through 21 (6/25/03). 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 (8/7/03).

and:

Exhibit	RX	Production Bates Numbers
F	1048	BPUNO-0009107
G	1052	BPUNO-0009136 to 9188
H	1053	BPUNO-0009137 to 9139
I	1056	BPUNO-0009591 to 9593
J	1066	BPUNO-0009601 to 9606

4. I have reviewed the documents (Exhibits A-J) 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 disclosure of these documents to the public and to competitors of the BP entities would cause serious competitive injury to BP America and/or BP West Coast.

Exhibits

5. Exhibits A (CX 1731; BPUNO-0001423 to 1427) and B (CX 0778; BPUNO-0001428 to 1432) are copies of a Reciprocal Patent Non-Assertion Agreement between BP America and Chevron U.S.A., Inc. executed by Chevron U.S.A. Inc. on May 15, 2002. These documents were created for the exclusive use of the parties to the Agreement. I am informed that Exhibits A and B were produced to Union Oil Company of California (“Unocal”) with the designation “Confidential” pursuant to the Protective Order in this matter. Apart from that production, the Agreement contained in these Exhibits has not been distributed to anyone outside of BP America, Chevron U.S.A., Inc., or their respective Affiliates (as set forth in the Agreement) to the best of my knowledge. Within BP America, the information contained in Exhibit A and B is known to only a small number of personnel, specifically those involved in developing and negotiating the Agreement. BP America has devoted substantial business and legal resources to the development, negotiation and implementation of the Agreement.

6. Disclosure of Exhibit A or B (or both) is likely to result in serious competitive injury to BP America and BP West Coast. Other parties with whom BP America and its Affiliates are negotiating or may negotiate similar agreements could use knowledge of Exhibits A or B, or of the terms contained in them to their advantage, and to the detriment of BP America, when negotiating the terms of their own agreements with BP America, or otherwise use the information in the operation of their businesses to the detriment of the BP entities.

7. Exhibit C (CX 2166; BPUNOBD-0000001 to 27) is a series of spreadsheets containing detailed volumetric, compositional and property information for individual batches of CARB summertime gasoline produced in 2001 and 2002 at BP West Coast's Carson Refinery. Exhibit D (CX 1781; BPUNOBD-0000028 to 37) is a related series of spreadsheets in the same format as Exhibit C, and it contains 2003 Carson Refinery CARB Phase 3 summertime gasoline batch data. (CARB Phase 3 refers to the gasoline specifications which are used currently at some refineries and which are mandated for 2004.) 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 because 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 Carson Refinery.

8. Disclosure of Exhibits C and D could cause serious and material harm to the competitive position of BP West Coast. Persons with access to the information contained in these documents would have access to certain production capacities, blending formulations and oxygenate requirements of the Carson Refinery, and could use this information against BP West Coast for any number of reasons, such as when negotiating exchange agreements or competing for customers. Moreover, this knowledge could permit suppliers or customers of the Carson Refinery to advantageously adjust their business strategies for CARB summertime gasoline and related products to the serious economic disadvantage of the Carson refinery.

9. Exhibit E contains excerpts from two deposition transcripts of Gary Youngman, Lead Engineer at BP West Coast's Carson Refinery. I understand that Mr. Youngman's testimony was taken by Respondent's Counsel on two occasions in this matter: once on June 25, 2003 in his individual capacity, and once on August 7, 2003 as a representative of BP West Coast for certain topics identified by Unocal. The first transcript contains Mr. Youngman's testimony concerning the Carson Refinery's ability to blend gasoline that meets the CARB Phase 3 specifications for T50, but does not overlap with Unocal's patent claims. (See Exhibit E, Transcript of June 25, 2003, at page 54 line 2 through line 21). This segment of testimony implicates highly confidential and commercially sensitive information about the Carson facility's current blending techniques and strategies for producing CARB Phase 3 gasoline. The entire transcript was designated "Confidential" pursuant to the Protective Order in this matter. Disclosing the refinery's ability to blend to any given set of specifications would put the refinery at a substantial competitive disadvantage, thereby causing serious economic injury to the refinery.

10. The second transcript contains Mr. Youngman's testimony concerning current blending practices at the Carson Refinery and analysis of potential alternatives, both in relation to avoiding overlap with Unocal's patent claims. It includes discussion of that facility's blending constraints and pool characteristics (See Exhibit E, Transcript of August 7, at page 56, line 12 through page 57, line 4). The testimony also contains information about the results of technical and economic analyses performed by BP West

Coast to determine the impact of certain changes in the Carson Refinery's operations. (See Exhibit E, Transcript of August 7, at page 73, line 10 through page 74, line 12; and at page 76, line 9 through page 77, line 5). Further, it discusses potential investments in new process units for the facility and estimates of their cost. (See Exhibit E, Transcript of August 7, at page 91, line 4 through page 92, line 12). The testimony in this transcript contains BP West Coast's detailed assessment of specific operational changes on Carson's production volumes for CARB Phase 3 gasoline, and the financial impact of those changes. All of this information is commercially sensitive to BP West Coast and closely guarded by its personnel. The entire transcript was designated "Restricted Confidential – Attorney Eyes Only" pursuant to the Protective Order in this matter. If the information in this transcript was made public, it could permit competitors to take advantage of limitations in the Carson Refinery's production capabilities and cost position, to the economic detriment of BP West Coast.

11. Exhibit F (RX 1048; BPUNO-0009107) contains confidential e-mail communications between BP West Coast personnel in July 2001 concerning the potential cost savings at the Carson facility from reducing premium octane levels from 92 to 91. The information contained in this document includes input costs, output levels for premium gasoline, and a calculation of variable cost savings for BP West Coast expressed as a specific number of cents-per-gallon. Exhibit F was created for internal use and limited distribution, and it is my understanding that this document was produced to Unocal with the designation "Restricted Confidential – Attorney Eyes Only" pursuant to the Protective Order in this matter because the document contains competitively sensitive financial information. Disclosure of this information would seriously harm the economic interests of BP West Coast by allowing competitors to learn certain costs and volumes for Carson's premium gasoline.

12. Exhibit G (RX 1052; BPUNO-0009136 to 9188)¹ contains several business strategy documents and marketing forecasts. For example, BPUNO-0009142 to 9154 is a highly confidential and commercially sensitive presentation prepared for the exclusive use of BP planning and management. I understand that this document was produced to Unocal with the designation "Restricted Confidential – Attorney Eyes Only" pursuant to the Protective Order in this matter because it contains detailed economic analyses and strategic plans for major capital investments by BP West Coast. The presentation includes BP West Coast's supply and demand forecasts for finished products (BPUNO-0009145 to 9147), describes specific facility upgrades and investment options (BPUNO-0009149 to 9151) and itemizes their impacts on production volumes for conventional and CARB gasoline (BPUNO-0009152). The document reflects BP West Coast's current investment strategy for its refining operations and production allocation, and disclosure of such information could cause serious economic disadvantage to BP West Coast.

¹ The Bates range designated by Unocal for RX 1052 (BPUNO-0009136 to 9188) covers multiple documents, and I am informed that counsel for BP West Coast has requested clarification from Unocal as to any specific pages or documents intended for use as hearing exhibits.

13. Exhibit H (RX 1053; BPUNO-0009137 to 9139)² reflects confidential communications between BP refining personnel via e-mail in June 2002. The information in this document was intended for internal discussion and planning purposes, and not for public distribution. I am informed that Exhibit H was produced to Unocal with the designation “Restricted Confidential – Attorney Eyes Only” pursuant to the Protective Order in this matter because it reflects detailed product strategies for making gasoline at the Carson Refinery under the current CARB Phase 3 regulations. These blending methods and constraints, specific gasoline properties and production strategies are all material to that facility’s current and future operations. Disclosure of this strategic information would put BP West Coast at a serious competitive disadvantage.

14. Exhibit I (RX 1056; BPUNO-0009591 to 9593) constitutes notes prepared by Gary Youngman for his deposition on August 7, 2003. This document was designated “Restricted Confidential – Attorney Eyes Only” pursuant to the Protective Order in this matter before it was produced to Unocal. The notes contain current and highly detailed confidential information about pricing sensitivities and production costs used in modeling output at the Carson Refinery to ensure compliance with the CARB Phase 3 regulations. (See RX 1056 at BPUNO-0009591). It also describes the blending methods and limitations that currently pertain to this facility. (See RX 1056 at BPUNO-0009592). I am aware that Exhibit I was produced to Unocal with the designation “Restricted Confidential – Attorney Eyes Only” pursuant to the Protective Order in this matter because it contains extremely sensitive information about the operating economics of the Carson Refinery. Disclosure of Exhibit I could cause serious harm to BP West Coast’s business interests, as a competitor with access to the information contained in this document would have the ability to determine certain cost structures and production strategies of this facility.

15. Exhibit J (RX 1066; BPUNO-0009601 to 9606) includes graphs showing specific distillation parameters related to potential patent avoidance blending strategies. These graphs were based on measured distributions from Carson refinery products. Competitors could use these graphs to infer the refinery’s ability to meet specific blending targets. The pages on which the graphs and blending distribution analyses appear (BPUNO-0009601 to 9603) were produced to Unocal with the designation “Restricted Confidential – Attorney Eyes Only” pursuant to the Protective Order in this matter. Exhibit J also includes several Carson-specific strategies for blending around one or more of the Unocal patents. (See BPUNO-0009606). This page was designated “Confidential” pursuant to the Protective Order in this matter before it was produced to Unocal. Carson’s strategy is not generally available to competitors and therefore disclosure of such strategies could result in serious competitive harm to BP West Coast.

² This exhibit is actually part of a four page document beginning at BPUNO-0009136, which is one of the documents included within Exhibit G (RX 1052; BPUNO-0009136 to 9188) above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this _____ day of October, 2003, in _____.

Patrick E. Gower

**TABS A – J
REDACTED**