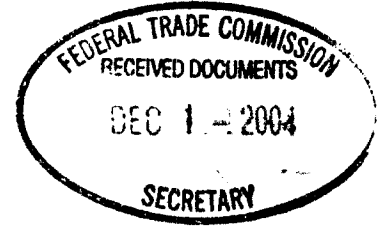


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



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

Docket No. 9305

ORDER ON ADDITIONAL MOTIONS FOR *IN CAMERA* TREATMENT

I.

Pursuant to Commission Rule 3.45(b), several non-parties have filed additional motions for *in camera* treatment for information that Complaint Counsel indicated, on October 15, 2004, 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, 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, at *6-7 (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, at *3 (Feb. 18, 1993); *In re Textron, Inc.*, 1991 FTC LEXIS 135, at *1 (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*, 97 F.T.C. at 117. 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.

II.

Non-party BP America Inc. (“BP”), on October 29, 2004, filed its third motion seeking *in camera* treatment for two documents. The parties do not oppose the motion. BP seeks *in camera* treatment for a period of five years.

BP's motion provides a declaration of Patrick E. Gower, Refining Vice President – U.S. Region, BP Products North America Inc. (“Gower Declaration”). As described by the Gower Declaration, the information for which *in camera* treatment is sought is recent batch data for CARB summertime gasoline; the documents contain highly confidential and commercially sensitive information; and disclosure of these documents could cause real and serious damage to the competitive position of BP West Coast.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, BP's motion is GRANTED. *In camera* treatment, for a period of five years, to expire on November 1, 2009, is granted to: BPUNOBD-0000038 to 49 and BPUNOBD-0000050 to 62.

III.

Non-parties Shell Oil Company, Equilon Enterprises LLC d/b/a/ Shell Oil Products (US) and Motiva Enterprises LLC (collectively "Shell"), on October 29, 2004, filed their third motion seeking *in camera* treatment for two documents. The parties do not oppose the motion. Shell seeks *in camera* treatment for a period of five years.

Shell's motion provides a declaration from Fran S. Bove, Business Team Manager, Fuels Business Group, at Shell Global Solutions US Inc. ("Bove Declaration"). As described by the Bove Declaration, the information for which *in camera* treatment is sought is recent batch data for CARB summertime gasoline; the documents contain highly confidential and commercially sensitive information; and disclosure of these documents could cause real and serious damage to the competitive position of Shell.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Shell's motion is GRANTED. *In camera* treatment for a period of five years, to expire on November 1, 2009, is granted to: SHUNOBD-0000041 to 56 and SHUNOBD-0000057 to 69.

IV.

Non-party Chevron U.S.A., Inc. ("Chevron"), on October 29, 2004, filed its third motion seeking *in camera* treatment for two documents. On November 23, 2004, pursuant to Rule 3.45(g), provisional *in camera* status was granted to CX 2173, an exhibit consisting of the same two documents. Chevron seeks *in camera* treatment for a period of five years. The parties do not oppose the motion.

Chevron's motion provides a declaration of William Engibous, Manager, Supply Optimization Group, U.S. West Coast at Chevron Texaco Products Company ("Engibous Declaration"). As described by the Engibous Declaration, the information for which *in camera* treatment is sought is recent batch data for CARB summertime gasoline; the documents contain highly confidential and commercially sensitive information; and disclosure of these documents could cause real and serious damage to the competitive position of Chevron.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Chevron's motion is GRANTED. *In camera* treatment, for a period of five years, to expire on November 1, 2009, is granted to: CHUNOBD-0000022 to 32 and CHUNOBD-0000033 to 40.

V.

Non-party ExxonMobil Inc. (“ExxonMobil”), on October 29, 2004, filed its third motion seeking *in camera* treatment for two documents. The parties do not oppose the motion. Chevron seeks *in camera* treatment for a period of five years.

ExxonMobil’s motion provides a declaration of Thomas R. Eizember, Senior Planning Advisor in the Corporate Planning Department for Exxon Mobil Corporation (“Eizember Declaration”). As described by the Eizember Declaration, the information for which *in camera* treatment is sought is recent batch data for CARB summertime gasoline; the documents contain highly confidential and commercially sensitive information; and disclosure of these documents could cause real and serious damage to the competitive position of ExxonMobil.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, ExxonMobil’s motion is GRANTED. *In camera* treatment, for a period of five years, to expire on November 1, 2009, is granted to: EXMOUNOBD-0000016 to 22 and EXMOUNOBD-0000023 to 29.

VI.

Non-party Valero Energy Corporation (“Valero”), on November 5, 2004, filed a motion seeking *in camera* treatment for a document identified by bates numbers VAL FTC – 0050113 to 0052226. On November 30, 2004, Valero filed a supplemental motion indicating that the information in this document had been condensed into a new document, identified by bates numbers VALBD – 001 to 054. In its supplemental motion, Valero withdrew its request for *in camera* treatment of the document identified by bates numbers VAL FTC – 0050113 to 0052226. Valero now seeks *in camera* treatment only for the document identified by bates numbers VALBD – 001 to 054. The parties do not oppose the motion or the supplemental motion. Valero seeks *in camera* treatment for a period of not less than ten years.

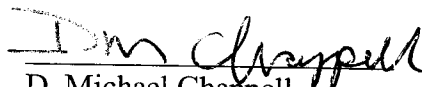
Valero’s supplemental motion provides a supplemental declaration of Martin E. Loeber, Vice President of Litigation for various Valero entities (“Loeber Declaration”). As described by the Loeber Declaration, the information for which *in camera* treatment is sought is production and process records for 2003 and 2004; the information has been maintained in confidence; and the document contains highly sensitive information, the disclosure of which could cause competitive injury to Valero.

A review of the supplemental declaration in support of the motion and the document reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Valero’s motion is GRANTED. *In camera* treatment, for a period of ten years, to expire on November 1, 2014, is granted to: VALBD – 001 to 054.

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: December 1, 2004