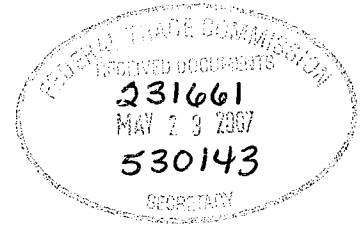


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
)
Paul L. Foster,)
)
Western Refining, Inc., and)
)
Giant Industries, Inc.)
_____)

Docket No. 9323

GIANT INDUSTRIES, INC.'s

ANSWER TO COMPLAINT

Pursuant to 16 C.F.R. § 3.12, Giant Industries, Inc. ("Giant") hereby answers as follows the Complaint dated May 3, 2007. This Answer is provided only on behalf of Giant, and does not purport to answer on behalf of any other party. The inclusion of any ground within the section titled "DEFENSES" does not constitute an admission that Giant bears the burden of proof on each or any of the matters, nor does it excuse complaint counsel from establishing each element of its purported claim for relief.

Regarding the unnumbered materials on page 1 of the Complaint, Giant admits that the Complaint has been issued, but denies that a proceeding would be in the public interest and denies that the Complaint is well founded in law or fact.

1. The activities of Paul L. Foster are outside the personal knowledge of Giant, and are therefore denied.

2. The activities of Paul L. Foster are outside the personal knowledge of Giant, and are therefore denied.

3. The activities of Western Refining, Inc. are outside the personal knowledge of Giant, and are therefore denied.

4. Admitted that Western has been engaged in the business of refining crude oil into refined petroleum products, including gasoline and diesel, and further admitted that Western sells refined petroleum products. Otherwise, the full scope of the activities of Western Refining, Inc. are outside the personal knowledge of Giant, and are therefore denied.

5. The activities of Western Refining, Inc. are outside the personal knowledge of Giant, and are therefore denied.

6. Giant denies that its street address is 23722 North Scottsdale Road. Giant otherwise admits the allegations of paragraph 6.

7. Giant objects that the phrases “energy company,” “transportation,” and “related businesses” are ambiguous. Giant otherwise admits the allegations of paragraph 7.

8. Admitted.

9. Giant admits that it entered into a merger agreement on August 26, 2006, amended on November 12, 2006. The remaining allegations of paragraph 9 are denied.

10. Admitted.

11. Admitted that the Commission authorized its staff to seek a temporary restraining order and a preliminary injunction as described. Denied that this

determination was in the public interest or that the acquisition is unlawful for the reasons alleged or otherwise. The remaining allegations of paragraph 11 are denied.

12. Admitted that the closing of the Acquisition is subject to the District Court's restraining order, but it is also subject to the terms and conditions in the merger agreement.

13. Giant objects that the phrases "lines of commerce," "bulk supply," and "narrower markets contained therein" are ambiguous. To the extent this paragraph requires a response, the allegations are denied.

14. The first sentence of paragraph 14 is admitted, except it is denied that jet fuel is used in automobiles. Admitted that light petroleum products can be manufactured from crude oil, and are so manufactured at numerous refineries in the United States and elsewhere. Admitted that gasoline, diesel, and jet fuel are not demand-side substitutes for each other. The remaining allegations of paragraph 14 are denied.

15. Giant objects that the phrases "markets," "bulk shipments," and "bulk" are ambiguous. Admitted that in many instances gasoline is transported from the producing refineries to locations near where the products are consumed. Giant admits that the assertions in the last sentence of paragraph 15 are true in some instances, but denies that they are true in all instances. The remaining allegations are outside of the personal knowledge of Giant, and are therefore denied.

16. Giant objects that the phrase "bulk light petroleum products" is ambiguous. Giant admits that the assertions in paragraph 16 are true in some instances, but denies that they are true in all instances.

17. Giant admits that the assertions in the first two sentences in paragraph 17 are true in some instances, but denies that they are true in all instances. The third sentence of paragraph 17 is admitted. The remaining allegations of paragraph 17 are denied.

18. Denied.

19. Giant objects that the phrases “northern New Mexico” and “bulk” are ambiguous. Admitted that Western and Giant both own and operate one or more refineries, and admitted that both companies have sold gasoline and diesel, and that some of Giant’s customers have operations in Albuquerque and some of Western’s customers have operations in Albuquerque. The allegations of paragraph 19 are otherwise denied.

20. Giant objects that the phrases “northern New Mexico” and “bulk” are ambiguous. Admitted that Giant owns and operates two refineries, in Bloomfield and Ciniza; that from these refineries Giant supplies gasoline and diesel fuel to New Mexico, Arizona, Utah, and Colorado; and that Giant owns a petroleum products terminal in Albuquerque from which it supplies gasoline and diesel fuel to various locations in New Mexico. To the extent that the remaining allegations require any response, they are denied.

21. Admitted, except that the following allegations are outside the personal knowledge of Giant, and are therefore denied: the exact origination point of the Plains Pipeline, whether the Plains Pipeline transports products to Mexico, and the ownership of the Plains Pipeline.

22. The first sentence of paragraph 22 is admitted. Admitted that Western’s refinery produces transportation fuels, and products are shipped to Albuquerque via the

Plains Pipeline. The remaining allegations are outside the personal knowledge of Giant, and Giant therefore demands strict proof thereof. Giant objects that the phrase “bulk quantities” is ambiguous.

23. Giant objects that the phrase “full capacity” is ambiguous. Admitted that the capacity of the Plains Pipeline is allocated. The remainder of paragraph 23 consists of legal conclusions to which no response is required, or describes the actions of non-parties, and thus makes allegations that are outside of Giant’s personal knowledge and are therefore denied.

24. The first three sentences of paragraph 24 are admitted, except denied that the entire complex is located in Artesia, and the exact identity of the entity that leases and operates the Four Corners Pipeline is outside of Giant’s personal knowledge and is therefore denied. Giant objects that the phrase “northern New Mexico” is ambiguous. Admitted that Holly ships products on the Plains Pipeline. The remaining allegations of paragraph 24 are outside of Giant’s personal knowledge, and are therefore denied.

25. Admitted, except that: (1) Giant objects that the phrase “bulk light petroleum products” is ambiguous; and (2) the ownership of the ATA pipeline is outside of Giant’s personal knowledge and is therefore denied.

26. The first two sentences of paragraph 26 are admitted, except that: (1) Giant objects that the phrase “bulk light petroleum products” is ambiguous; and (2) the ownership of the ATA pipeline is outside of Giant’s personal knowledge and is therefore denied. The remaining allegations of paragraph 26 are outside of Giant’s personal knowledge, and are therefore denied.

27. Giant objects that the phrases “northern New Mexico,” “bulk light petroleum products,” “bulk gasoline supply,” “bulk supply,” and “bulk suppliers” are ambiguous. Admitted that at least two other firms currently supply the parts of New Mexico that might be described as “northern” with light petroleum products via pipeline. The remaining allegations of paragraph 27 are denied.

28. Giant objects that the phrases “bulk suppliers,” “bulk supply competitors,” and “northern New Mexico” are ambiguous. Admitted that there are more than seven suppliers of gasoline to the parts of New Mexico that might be described as “northern,” and that Giant is one of those suppliers. The remaining allegations of paragraph 28 are denied.

29. Admitted that the Plains Pipeline is allocated. The remaining allegations of paragraph 29 are denied.

30. The first sentence of paragraph 30 is admitted, except that Giant objects that the phrase “bulk suppliers” is ambiguous. The second sentence of paragraph 30 is denied.

31. Denied.

32. The first sentence of paragraph 32 is admitted, except denied that the refineries rely exclusively on local crude supplies. The second sentence of paragraph 32 is admitted, except that it is denied that the “30 percent” figure is exactly accurate.

33. Admitted. Giant notes that this paragraph does not allege Giant’s current understanding regarding the timing of pipeline operation and supply, and in responding to this paragraph Giant makes no representation in that regard.

34. Giant objects that the phrases “significantly,” “competes,” “substantially,” “substantial,” “spur price competition,” “full utilization,” and “bulk suppliers” are ambiguous. Giant further objects that much of paragraph 34 of the Complaint consists of conjecture and speculation. Giant admits that if it brings its refineries up to full utilization, production levels of light petroleum products at the refineries will increase. Giant further admits that it trucks a portion of its refineries’ output of light petroleum products to the Albuquerque area. The remaining allegations of paragraph 34 are denied to the extent that a response is required.

35. The activities of Western Refining, Inc., and conjecture about what it might do or “could” find profitable, are outside the personal knowledge of Giant, and are therefore denied. Giant objects that the phrases “northern New Mexico market” and “northern New Mexico” are ambiguous. The remaining allegations of paragraph 30 are denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. The above responses to paragraphs 1-39 are repeated and re-alleged as though fully set forth here.

41. Denied.

42. The above responses to paragraphs 1-41 are repeated and re-alleged as though fully set forth here.

43. Denied

The portion of the Complaint on pages 9-10 sets out notices and legal conclusions and does not require a response.

Regarding the “contemplated relief” set out on pages 10-11 of the Complaint, in paragraphs numbered 1-6, Giant denies that any basis exists for the relief requested and deny that any such relief is appropriate, legal, in the public interest or that it should be granted.

DEFENSES

- 1) The relief sought is barred due to laches.
- 2) The relief sought is barred due to unclean hands.
- 3) The Complaint fails to state a claim upon which relief can be granted.
- 4) Granting the relief sought is contrary to the public interest.
- 5) Efficiencies and other procompetitive benefits, resulting from the merger, outweigh any and all proffered anticompetitive effects.
- 6) The merger is not anticompetitive and will not lessen competition in any line of commerce.
- 7) Market concentration statistics do not accurately reflect the competitive dynamics of the industry.
- 8) The FTC could not have a reason to believe that the merger will lessen competition.
- 9) The actions of the FTC in investigation and challenging this merger infringes Giant’s rights under the United States Constitution and the Clayton Act.

10) Giant reserves the right to assert other defenses as they become known to Giant.

WHEREFORE, Giant respectfully requests that the ALJ (i) deny the FTC's contemplated relief, (ii) dismiss the Complaint in its entirety with prejudice, (iii) award Giant its cost of suit, including attorneys' fees, and (iv) award such other relief as the ALJ may deem proper.

DATED: May 23, 2007

Respectfully submitted,

By:


Jonathan Berman

JONES DAY
Tom D. Smith
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GIANT INDUSTRIES, INC.
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Fax: (480) 585-8985

Attorneys for Giant Industries, Inc.

NOTICE OF APPEARANCE



CASE NAME In the Matter of Paul Foster, Western Refining, Inc., and Giant Industries, Inc.	FILE/DOCKET NUMBER 9323
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► Pursuant to Section 4.1 of the Commission's Rule of Practice, enter in the above proceeding the appearance of

counsel or representative for the respondent (Complete items 1, 2, 4, and 5 below)

counsel supporting the complaint (Complete items 1, 3, 4, and 5 below)

1. COUNSEL OR REPRESENTATIVE	2. RESPONDENTS
<p>Include name, address and telephone of each</p> <p>Tom D. Smith Jonathan Berman</p> <p>JONES DAY 51 Louisiana Avenue, N.W. Washington D.C. 20001-2113 Tel: (202) 879-3939</p>	<p>Include address and telephone numbers of all persons, partnerships, corporations, or associations</p> <p>Giant Industries, Inc. 23733 N. Scottsdale Road Scottsdale, AZ 85255 Tel: (480) 585-8851</p>

3. ASSOCIATE/ASSISTANT DIRECTOR

4. SIGNATURE OF SENIOR COUNSEL 	5. DATE SIGNED 5.27.07
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Return this form to: H-135
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, D.C. 20580

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
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Paul L. Foster,)	
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Western Refining, Inc., and)	Docket No. 9323
)	
Giant Industries, Inc.)	
)	

DECLARATION OF JONATHAN BERMAN

Pursuant to Section 4.1 of the Federal Trade Commission's Rules of Practice, and in support of my Notice of Appearance in this case, I certify that I am eligible to represent Giant Industries, Inc. before the Federal Trade Commission as I am a member of the District of Columbia Bar (Bar No. 445169) and in good standing within the legal profession.

DATED: May 23, 2007

Respectfully submitted,

By: 
Jonathan Berman

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Fax: (202) 626-1700

Attorney for Respondent Giant Industries, Inc.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
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Paul L. Foster,)	
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Western Refining, Inc., and)	Docket No. 9323
)	
Giant Industries, Inc.)	
)	

DECLARATION OF TOM D. SMITH

Pursuant to Section 4.1 of the Federal Trade Commission's Rules of Practice, and in support of my Notice of Appearance in this case, I certify that I am eligible to represent Giant Industries, Inc. before the Federal Trade Commission as I am a member of the District of Columbia Bar (Bar No. 221986) and in good standing within the legal profession.

DATED: May 23, 2007

Respectfully submitted,

By: 
Tom D. Smith

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Attorney for Respondent Giant Industries, Inc.

CERTIFICATE OF SERVICE AND COMPLIANCE

I, Hugh M. Hollman, certify that on May 23, 2007, copies of the above Defendant Giant Industries, Inc.'s Answer to Complaint and Notice of Appearance (with accompanying declarations) were served on the following as indicated:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
Room H-112
600 Pennsylvania Avenue, NW
Washington, DC 20580
Tel: (202) 326-3637
(Via hand delivery)

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-135
Washington, DC 20580
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dclark@ftc.gov; secretary@ftc.gov
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(Via e-mail and hand delivery)

Marian Bruno
Associate Director, Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
(Via registered mail)

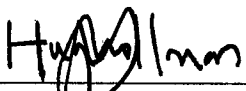
Alden Abbott
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Federal Trade Commission
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Marc.Schildkraut@hellerehrman.com
(Via e-mail and hand delivery)

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.

By:



Hugh M. Hollman
JONES DAY
Tel: (202) 879-3496