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

COMMISSIONERS:

2. Respondent Foster is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is an entity whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Western Refining, Inc.

3. Respondent Western is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 6500 Trowbridge Drive, El Paso, Texas 77905. Western Refining operates primarily in the Southwest region of the United States, including Arizona, New Mexico, and west Texas.
4. Respondent Western is, and at all times relevant herein has been, an energy company engaged, either directly or through affiliates, in the refining of crude oil into refined petroleum products, including gasoline, diesel, and other light petroleum products; the transportation, terminaling, and marketing of gasoline, diesel fuel and other refined products; and other related businesses.
5. Respondent Western is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Giant Industries, Inc.

6. Respondent Giant is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 23722 North Scottsdale Road, Scottsdale, Arizona 85255. Giant operates primarily in Virginia, Maryland, North Carolina, New Mexico, Arizona, and Colorado.
7. Respondent Giant is, and at all times relevant herein has been, an energy company engaged, either directly or through affiliates, in the refining of crude oil into refined petroleum products, including gasoline, diesel, and other light petroleum products; the transportation, terminaling, and marketing of gasoline, diesel fuel and other refined products; and other related businesses.
8. Respondent Giant is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE ACQUISITION

9. Pursuant to an Agreement and Plan of Merger, by and among Western, Giant, and “New Acquisition Corporation,” a wholly-owned subsidiary of Western, dated August 26, 2006, Western agreed to acquire Giant for approximately \$1.4 billion in cash. The agreement was subsequently amended on November 12, 2006 (the “Acquisition”). Upon completion of the Acquisition, Giant will become a wholly-owned subsidiary of Western.
10. On April 10, 2007, the Commission authorized the commencement of an action under Section 13(b) of the FTC Act to seek a temporary restraining order and a preliminary injunction barring the Acquisition during the pendency of administrative proceedings to be commenced by the Commission pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b).
11. In authorizing the commencement of this action, the Commission determined that a temporary restraining order and preliminary injunction are in the public interest and that it has reason to believe that the Acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act because the Acquisition may substantially lessen competition in the relevant markets alleged in this Complaint.
12. On April 13, 2007, United States District Judge James O. Browning of the United States District Court for the District of New Mexico issued a Memorandum Opinion and Order granting the FTC’s application for a temporary restraining order. The closing of the Acquisition is subject only to the District Court’s restraining order.

III. TRADE AND COMMERCE

Relevant Product Markets

13. Lines of commerce in which to analyze the effects of the proposed Acquisition are the bulk supply of motor gasoline, diesel fuels, and jet fuel (collectively “light petroleum products”) and narrower markets contained therein (*i.e.*, gasoline).
14. Light petroleum products are examples of fuels used in automobiles and other vehicles. They are produced from crude oil at refineries in the United States and throughout the world. There is no substitute for gasoline as a fuel for automobiles and other vehicles designed to use gasoline. Similarly, there is no substitute for diesel fuel for vehicles designed to use diesel fuel, or for jet fuel for airplanes designed to use jet fuel.

15. Light petroleum products are transported in bulk from the producing refineries to markets where the products are demanded. Bulk shipments typically involve volumes in excess of 5,000 barrels up to one million or more barrels via ocean-going tankers. The size of pipeline shipments are generally in the range of 5,000 to 50,000 barrels. Road transport of gasoline or diesel fuel is relatively expensive due to the volume and weight of the product and is not an economic substitute for water vessel or pipeline transportation of bulk shipments over great distances.
16. Bulk light petroleum products are delivered by waterborne vessels or pipelines into product terminals used for storage and distribution or further pipeline shipment. Product terminals are specialized facilities with large storage tanks used to receive light petroleum products by pipeline, by water, or direct from refinery production; for storage; and for redistribution by pipeline, water carrier, or local distribution by truck. Product terminals also perform value-added services, such as handling and injection of motor fuel additives as light petroleum products are redelivered.
17. Light petroleum products are transported from product terminals to final distribution points (retail gasoline stations or other wholesale delivery points) by tanker trucks each capable of carrying about 9,000 gallons of gasoline, the equivalent of almost 200 barrels. Producing refineries, whether or not connected to a refined products pipeline terminal, may also provide distribution services to wholesale customers from light petroleum product terminal tanks located at such refineries. Off-road diesel and jet fuel are not substitutes for on-road fuel demand.

Relevant Geographic Markets

18. Relevant sections of the country in which to analyze the proposed Acquisition include northern New Mexico, consisting of Rio Arriba, Taos, Mora, San Miguel, Los Alamos, Santa Fe, Valencia, Torrance, Bernalillo, Guadalupe, and Sandoval counties, where the merger would reduce competition among bulk suppliers of light petroleum products, and narrower markets therein, as alleged below.

Market Structure

19. Western and Giant are refiners and bulk suppliers that supply gasoline and diesel in competition to customers in northern New Mexico.
20. Giant owns and operates two refineries, and their adjacent terminals, in northern New Mexico, one in Bloomfield and the other in Ciniza, from which it supplies bulk gasoline and diesel fuel to New Mexico, Arizona, Utah, and Colorado. Giant also owns a petroleum products terminal in Albuquerque, from which it supplies bulk gasoline and diesel fuel to northern New Mexico.

21. Giant supplies its Albuquerque product terminal by truck from Giant's New Mexico refineries and from the Plains Pipeline – a common carrier pipeline transporting light petroleum products north from El Paso to Albuquerque and south from El Paso to Juarez, Mexico. The Plains Pipeline is owned by Plains All American Pipeline, L.P. and originates at the Western refinery terminal in El Paso.
22. Western owns and operates a single refinery complex located in El Paso. The refinery produces primarily high value transportation fuels, including gasoline, diesel fuel, and jet fuel. From its refinery, Western supplies these products to Albuquerque, El Paso, west Texas, Tucson, Phoenix, and Juarez, Mexico. Western supplies gasoline and diesel fuel in bulk quantities from its El Paso refinery to Albuquerque via the Plains Pipeline on which Western has historical shipping rights.
23. The Plains Pipeline currently operates at full capacity, which means that current shippers are allocated space on a pro rata basis according to their historical shipping volumes. As a result, by regulated tariff, the pipeline allocates only five percent of the pipeline's total volume to potential new shippers. Consequently, the volume available to any one individual new shipper is limited to a maximum of about 350 barrels per day.
24. Holly Corporation ("Holly") owns and operates a refinery complex (the "Navajo refinery") in Artesia, New Mexico. Holly ships light petroleum product from its Navajo refinery to northern New Mexico via the Four Corners Pipeline, a common carrier pipeline leased and operated by Holly Energy Partners, L.P. ("HEP"), a Holly affiliate. The Four Corners Pipeline originates at Holly's refinery in Artesia, delivers some product to HEP's terminal in Moriarty about 40 highway miles southeast of Albuquerque, and terminates at a HEP terminal in Bloomfield near one of Giant's refineries. Holly's refinery is the only supply source for product shipped on the Four Corners Pipeline. Holly also ships product to HEP's terminal in El Paso from its Navajo refinery via HEP's Artesia-to-Orla-to-El Paso Pipeline and a pipeline running directly from Artesia to El Paso. From HEP's El Paso terminal, Holly – like Western and Giant – uses its historical shipping rights on the Plains Pipeline to ship light petroleum products to a terminal owned by HEP in Albuquerque.
25. ConocoPhillips owns and operates a refinery at Borger, Texas. ConocoPhillips ships bulk light petroleum products to Albuquerque via the ATA Pipeline, a common carrier pipeline that ConocoPhillips co-owns with NuStar Energy, L.P. ("NuStar"), which until recently was known as Valero, L.P.
26. Valero Energy Corporation ("Valero") owns and operates a refinery in McKee, Texas. Valero ships bulk light petroleum products to northern New Mexico on the ATA Pipeline owned by ConocoPhillips and NuStar. The ATA Pipeline originates at Valero's refinery and terminates at ConocoPhillips' and NuStar/Valero L.P.'s storage terminals in

Albuquerque. ConocoPhillips' Borger refinery and Valero's McKee refinery are the only two suppliers with access to the ATA Pipeline to Albuquerque.

27. Two other firms currently supply northern New Mexico with bulk light petroleum products via pipeline. Neither firm can increase its bulk supply of all light petroleum products to northern New Mexico in response to a small output decrease by the five significant bulk suppliers (Giant, Western, ConocoPhillips, Valero, and Holly). One of the firms may be able to shift some of its diesel shipments to gasoline in response to a small output decrease in bulk gasoline supply by the five significant bulk suppliers (Giant, Western, ConocoPhillips, Valero, and Holly).

Anticompetitive Effects

28. The relevant markets are highly concentrated and would become significantly more concentrated after the Acquisition. Although there are seven bulk suppliers of light petroleum products to northern New Mexico, only five of these suppliers are currently capable of responding to a small decrease in the volume of gasoline and diesel fuel supply to Albuquerque terminals. Only these five should be counted as bulk supply competitors for light petroleum product sales to northern New Mexico: Giant, Western, ConocoPhillips, Valero, and Holly.
29. The current shippers on the Plains Pipeline could not respond to higher Albuquerque prices or reduced supply of light petroleum products by sending more total light petroleum products on that pipeline because the pipeline is already at full capacity. However, each of these firms (except one that ships only gasoline) could to some extent increase the amount of gasoline it sends to Albuquerque on the Plains Pipeline by substituting gasoline for other light petroleum products it currently ships.
30. Holly, ConocoPhillips, and Valero are large bulk suppliers of light petroleum products with large refineries in, or near, New Mexico connected to pipelines with significant unused capacity running to the Albuquerque area. However, limited supply responsiveness suggests these firms are unlikely to competitively constrain any small output reduction or price increase for light petroleum products or gasoline after the Acquisition.
31. The lack of additional shipping space on the Plains Pipeline for current shippers and the lack of economically viable volume on that pipeline for new shippers, increases the likelihood that there would be little or no supply response from the other relevant suppliers to Albuquerque to a future small reduction by the combined Western/Giant in the supply of light petroleum products or gasoline to northern New Mexico.

*Absent its Acquisition By Western, Giant Will
Soon Increase the Supply of Gasoline to Northern New Mexico*

32. Giant's two New Mexico refineries are landlocked and currently

IV. VIOLATIONS CHARGED

COUNT 1 – ILLEGAL ACQUISITION

40. The allegations contained in paragraphs 1-40 are repeated and realleged as though fully set forth here.
41. Western's proposed acquisition of Giant, if consummated, would substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

COUNT II – ILLEGAL ACQUISITION AGREEMENT

42. The allegations contained in paragraphs 1-40 are repeated and realleged as though fully set forth here.
43. Western and Giant, through the Agreement described in paragraph 10, have engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the third day of August, 2007, at 10:00 a.m., or such later date as determined by the Commission or by an Administrative Law Judge of the Commission, is hereby fixed as the time and Federal Trade Commission offices, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, as the place when and where a hearing will be had on the charges set forth in this Complaint, at which time and place you will have the right under the FTC Act to appear and show cause why

appropriate order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under §3.46 of the Commission's Rules of Practice for Adjudicative Proceedings and the right to appeal the initial decision to the Commission under §3.52 of said Rules.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Commission or the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

An initial prehearing scheduling conference will be scheduled no later than 14 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Ave., N.W. Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

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5. A requirement for Western to file periodic compliance reports with the Commission; and
6. Any other relief appropriate to correct or remedy the anticompetitive effects of the Acquisition or to restore Giant as a viable, independent competitor in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by the Secretary and its official seal to be affixed hereto, at Washington, D.C., this third day of May, 2007.

By the Commission.

Donald S. Clark
Secretary

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