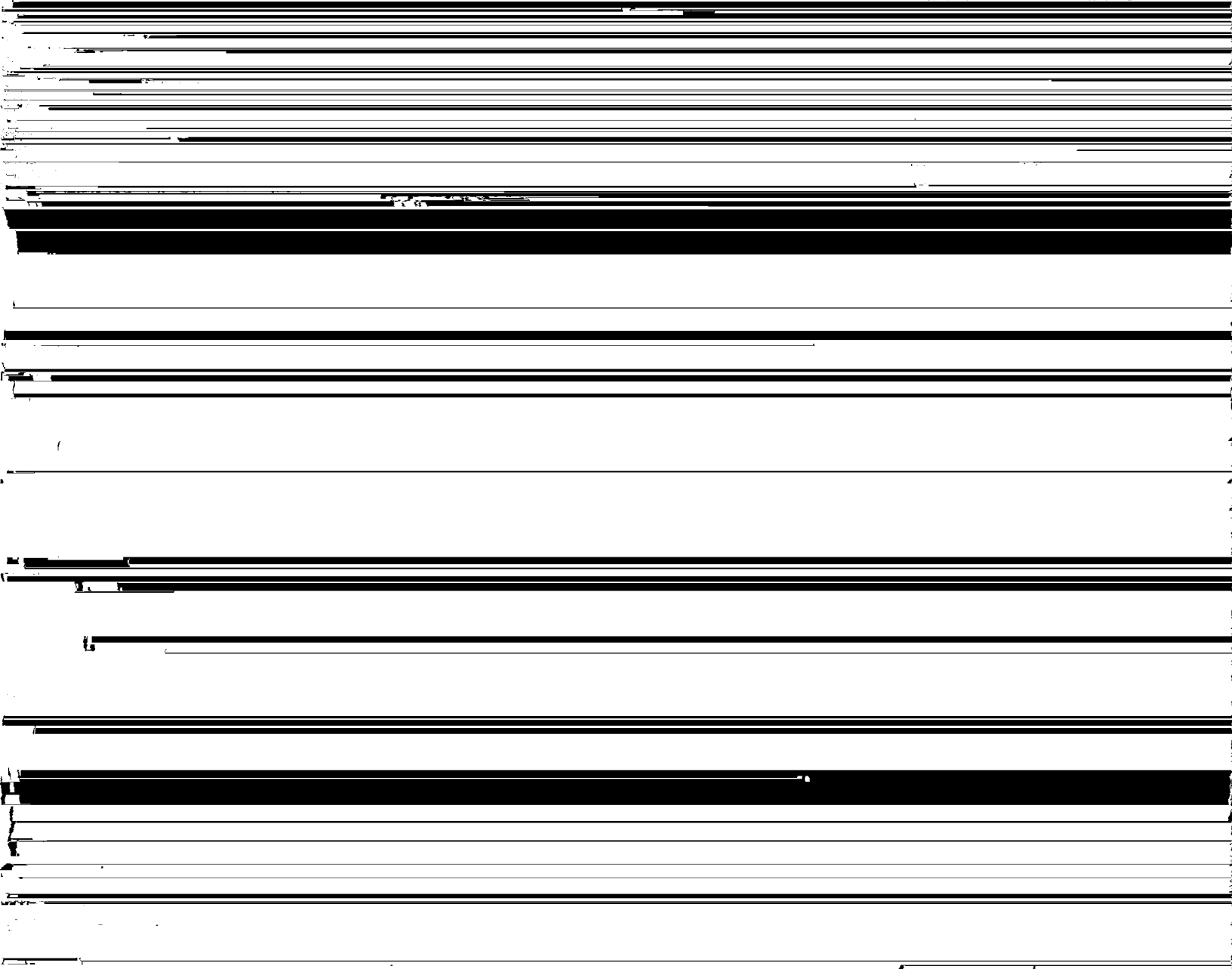


ORIGINAL

PUBLIC

UNITED STATES OF AMERICA

U.S. TRADE COMMISSION



MAY 23 1967
530143
SECRETARY

In the Matter of)

Paul L. Foster,)

Western Refining, Inc., and)

Giant Industries, Inc.)

Docket No. 9323

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

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. A further allegation is that the acquisition is unlawful for the reasons

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 Cijiza: that from these refineries Giant supplies gasoline and diesel fuel to New Mexico.

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.

22 Giant objects that the phrase "bulk quantities" is ambiguous. Ad. 74-14-14

27. Giant objects that the phrases "northern New Mexico," "bulk light petroleum products," "bulk gasoline supply," "bulk supply," and "bulk suppliers" are

applicable. Admitted that at least two other firms currently supply the state of New

Mexico that might be described as "gasoline" with 11.14 percent of the state's supply.

34. Giant objects that the phrases "significantly," "competes," "substantially,"
"substantial," "spur price competition," "full utilization" and "bulk suppliers" are _____

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 requests that the Court grant its motion for summary judgment and award Giant its costs and attorney's fees.

Respectfully,
Giant

[Redacted Name]

[Redacted Title]

[Redacted Address]

[Redacted City/State/Zip]

[Redacted Phone/Fax]

[Redacted Email]

[Redacted Case/Document Reference]

[Redacted Date]

[Redacted Signature]

[Redacted Title]

[Redacted Address]

[Redacted City/State/Zip]

[Redacted Phone/Fax]

[Redacted Email]

[Redacted Case/Document Reference]

[Redacted Date]

[Redacted Signature]

[Redacted Title]

[Redacted Address]

[Redacted City/State/Zip]

[Redacted Phone/Fax]

[Redacted Email]

[Redacted Case/Document Reference]

[Redacted Date]

[Redacted Signature]

[Redacted Title]



PLAINTIFF

DEFENDANT

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
 Paul L. Foster,)
)
 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

[REDACTED]

UNITED STATES OF AMERICA

In the Matter of)

Paul L. Foster,)

Western Refining, Inc., and)

Giant Industries, Inc.)
_____)

Docket No. 9323

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

CERTIFICATE OF SERVICE AND COMPLIANCE

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

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-135
Washington, DC 20580