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**From:** Stone, Marissa, NMENV  
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Federal judge allows proposed merger to move ahead, 1st Ld-Writethru, NM  
 By TIM KORTE Associated Press Writer

ALBUQUERQUE, N.M. (AP) \_ A federal judge on Tuesday denied the Federal Trade Commission's efforts to block a proposed \$1.3 billion merger between Western Refining and Giant Industries, clearing the way for the Southwest gasoline companies to join forces.

Western Refining president Paul Foster said the decision by U.S. District Judge James Browning, allowing the merger to proceed, will help the companies keep fuel prices lower by combining resources.

"We believe a Western-Giant combination is pro-competitive and provides important benefits to the companies' stakeholders, including our customers, shareholders and employees," Foster said in a news release.

Hours later, the FTC requested a stay and said it was moving ahead with an appeal.

"The district court's order is based on an expedited and abbreviated hearing that took place in under a week," FTC spokesman Mitchell Katz said. "The commission is now reviewing the court's order and considering its options."

Browning also dissolved a temporary restraining order issued April 13.

Western, based in El Paso, Texas, and Giant Industries, Inc., based in Scottsdale, Ariz., said they agreed with the FTC not to complete the deal before noon Thursday, pending the federal agency's anticipated appeal to the 10th U.S. Circuit Court of Appeals.

"Western and Giant noted that absent a ruling from the 10th Circuit enjoining this merger, the companies may close the transaction at any point after noon Mountain Time on Thursday," the news release said.

Foster added: "There is no basis for the FTC to appeal the district court's decision. We remain confident in our position and look forward to closing the transaction."

FTC lawyers argued in court that the merger would reduce competition and lead to higher prices for the bulk supply of gasoline in 11 counties of northern New Mexico, where averages have hit record highs \_ well above \$3 per gallon \_ as the summer travel season opens.

Lawyers for Western Refining and Giant replied that the sale will lower gasoline costs. Rather than eliminating competition because of the merger, they said the companies already have been cooperating for years.

Chris Erickson, associate professor of economics at New Mexico State University, said it's difficult to know who's correct \_ the FTC or the gas companies.

He noted a report released last week by the Government Accountability Office charted more than 2,600 mergers within the U.S. petroleum industry in the 1990s, leading to higher wholesale gasoline prices \_ 1 to 7 cents per gallon.

The report said the impact of mergers since 2000 was unknown, and it noted the GAO's retrospective approach

differed from the prospective analysis used by the FTC when studying any potential merger.

"It's guesswork," Erickson said. "But the fact is that in the refinery industry overall, a merger mania during the last decade increased the price of gasoline. Whether it applies directly to this merger is more difficult to say."

In November, Western and Giant announced an agreement where Western planned to acquire outstanding Giant stock shares at \$77 per share. Giant Industries shareholders voted to approve the transaction on Feb. 22.

Western Refining is an independent crude oil refiner and marketer of refined products. It operates primarily in the Southwest.

Giant owns two New Mexico crude oil refineries, a crude oil pipeline system, finished products distribution terminals in Albuquerque and Flagstaff, Ariz., a trucking fleet and retail service station and convenience stores in New Mexico, Colorado and Arizona.

Power plant construction under way near Hobbs, NM

HOBBS, N.M. (AP) \_ A new natural gas-fired, 550-megawatt electrical generating station west of Hobbs is expected to be in operation by the middle of next year.

Colorado Energy Management of Lafayette, Colo., is building and will operate the \$300 million Maddox power plant.

Construction kicked off last week with a celebration on the 70-acre work site.

"It's exciting to us," said Colorado Energy president James Nolan. "This is our passion, to build a project, to bring people together, to be successful."

Xcel Energy, which is to begin buying electricity from the plant by June 2008, has agreed to buy electricity from the plant for the next 25 years to supply the growing demand in Texas and New Mexico.

Some 500 workers will be on site by September or October for the construction phase. There will be 20 permanent jobs.

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BIA clears up confusion over Desert Rock comment site, 1st Ld-Writethru, NM

FARMINGTON, N.M. (AP) \_ The U.S. Bureau of Indian Affairs wants the public to know its comments on an environmental impact statement for a controversial power plant are not being screened.

Although the Web site to post comment looks similar to one run by the developers, the BIA said its site is run by a third party under contract with the BIA.

The confusion could stem from a similar address \_ the BIA's [www.desertrockenergy.com](http://www.desertrockenergy.com), hosted by URS Corp., a contractor working on the impact statement, versus Sithe Global Power's [www.desertrockenergyproject.com](http://www.desertrockenergyproject.com).

The Navajo Nation's Dine Power Authority and Houston-based Sithe Global Power have partnered to build the \$3 billion Desert Rock Power Plant 25 miles southwest of Farmington.

The BIA released a draft environmental impact statement this month in support of the project, and opened it up to a 60-day comment period. Public hearings also are planned.

Harilene Yazzie, the Navajo Environmental Protection Agency coordinator for the BIA's Navajo regional office, said the comments won't be reviewed or screened by Sithe Global, DPA or the Navajo Nation.

"All that information is going to be on URS and their database," she said.

The BIA frequently partners with other companies to post information online because the agency is under a judge's order not to use the Internet, Yazzie said.

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