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October 9, 2012

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423



Re: NOR 42123, *M&G Polymers USA, LLC v. CSX Transportation, Inc.*

Dear Ms. Brown:

On behalf of Union Pacific Railroad Company (“Union Pacific”), I am writing to address an issue raised by the Board’s September 27, 2012, decision in *M&G Polymers USA LLC v. CSX Transportation, Inc.* In that decision, the Board offered “parties” 30 days to submit comments regarding its “refined approach” to the analysis of qualitative market dominance in rate cases. Because the Board repeatedly referred to “parties,” rather than “the parties,” in the context of soliciting comments, Union Pacific believes the Board may have been inviting interested parties other than the litigants to submit comments, but it is not certain.

Union Pacific has a strong interest in the Board’s approach to the analysis of qualitative market dominance. Union Pacific believes the Board *should* solicit comments from interested parties before relying on its new approach in future cases. However, the Board should seek such comments through a properly noticed rulemaking that provides interested parties adequate time to prepare their comments, not as part of the ongoing litigation between M&G and CSXT.

If the Board intended to invite non-litigants to submit comments in the ongoing litigation, it should clarify its intent, but also rethink its plans. The Board took one year to develop its new approach to qualitative market dominance after M&G and CSXT submitted their evidence. A 30-day comment period would not give UP sufficient time to provide its detailed criticisms of the Board’s new approach, much less respond to the Board’s request for comments addressing whether there might be a “better general approach” or “superior benchmark” to guide the Board’s qualitative market dominance inquiry. UP expresses no view on how or when the Board should resolve the disputed qualitative market dominance

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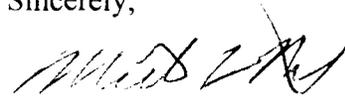
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issues in the ongoing litigation between M&G and CSXT. But, if the Board is proposing to apply its new approach in future rate cases, it should institute a rulemaking that provides interested parties a fair opportunity to provide meaningful comments.

The Board's new approach to the analysis of qualitative market dominance appears to be flawed in many respects. Among other things, it appears the Board replaced a congressionally mandated qualitative test of market dominance with a quantitative test; it never explains why its prior approach is insufficient to distinguish between effective transportation alternatives and alternatives it says are "patently ridiculous"; and it relies on unsupported assertions about conclusions that can be drawn from simple comparisons between R/VC calculations for individual movements and a railroad's RSAM figure.

Union Pacific would elaborate on these and other issues raised by the Board's recent decision if given the opportunity in a properly noticed rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Rosenthal", written in a cursive style.

Michael L. Rosenthal

cc: Jeffrey O. Moreno
G. Paul Moates