

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42123

M&G POLYMERS USA, LLC

v.

CSX TRANSPORTATION, INC., AND
THE SOUTH CAROLINA CENTRAL RAILROAD COMPANY¹

Decided: February 4, 2011

This decision grants a motion of M&G Polymers USA, LLC (M&G) to dismiss with prejudice its complaint against South Carolina Central Railroad Company (SCRF). This decision also grants a motion of M&G for an extension of time to respond to CSX Transportation, Inc.'s (CSXT) motion for expedited determination of jurisdiction over challenged rates.

On June 18, 2010, M&G filed a complaint challenging the reasonableness of rates established by CSXT, for the transportation of polyethylene terephthalate between 69 origin and destination pairs. M&G alleges that CSXT possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed using the Board's Stand-Alone Cost (SAC) test. By a decision served on August 4, 2010, a procedural schedule and a protective order were established.² On August 16, 2010, M&G filed an amended complaint, which deleted 6 lanes from the challenged traffic and added 5 more, resulting in a total of 68 origin and destination pairs.

On October 18, 2010, M&G filed a motion for leave to file a second amended complaint, which, among other things, joined one short line carrier, SCRF, as a defendant. On November 8, 2010, SCRF filed its answer. Then, on November 19, 2010, SCRF filed: (1) a motion to bifurcate, requesting that the Board determine whether SCRF possesses market dominance prior to having the parties present their SAC analysis; and (2) an accompanying motion for protective order, requesting that the Board quash M&G's discovery requests except with regard to market dominance until the Board rules on SCRF's motion to bifurcate.

On January 27, 2011, M&G filed a motion to dismiss the complaint against SCRF with prejudice, stating that those parties have reached a settlement agreement. On February 1, 2011,

¹ By decision served July 22, 2010, the Board dismissed with prejudice the complaint against Canadian National Railway Company at the request of the complainant.

² On January 10, 2011, M&G filed a motion to modify the procedural schedule. That motion will be ruled on in a separate decision.

M&G filed a third amended complaint to reflect the removal of SCRF and the revised CSXT tariff rates that M&G is challenging. M&G's motion to dismiss SCRF with prejudice will be granted. As the Board will grant M&G's motion to dismiss, SCRF's motion to bifurcate and its motion for protective order are moot.

On January 27, 2011, CSXT filed a motion for expedited determination of jurisdiction over challenged rates. Under the Board's rules, 49 C.F.R. § 1104.13(a), M&G's reply would be due by February 16, 2011. On February 1, 2011, M&G filed a motion to extend the due date for its reply by 2 days, until February 18, 2011. M&G states that it requests an extension because its counsel will be participating in an out-of-town, Board-sponsored mediation with CSXT in another proceeding on February 16, 2011, and that CSXT does not object to an extension. M&G's motion for extension of time to reply to CSXT's motion for expedited determination of jurisdiction over challenged rates will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. M&G's motion to dismiss is granted. The complaint against SCRF is dismissed with prejudice.
2. SCRF's motion to bifurcate and its motion for a protective order are moot.
3. M&G's motion for extension of time is granted. M&G's reply to CSXT's January 27, 2011 motion is due by February 18, 2011.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.