

June 7, 2011

via hand delivery

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

ENTERED
Office of Proceedings

JUN 07 2011

Part of
Public Record



**RE: Docket No. NOR 42123, M&G Polymers USA, Inc. v. CSX
Transportation, Inc.**

Dear Ms. Brown:

Enclosed for filing in the above-captioned case please find: (1) an original and ten (10) copies of the **Public Version** of the Opening Market Dominance Evidence ("Opening Evidence") of M&G Polymers USA, Inc. ("M&G"); (2) an original and ten (10) copies of the **Highly Confidential Version** of the Opening Evidence of M&G; and (3) an original and ten (10) copies of a Motion for Leave to File Late.

Nine (9) CDs are enclosed as well, comprised of three (3) CDs (labeled "CD 1 of 3") that contain the Public Version of the Opening Evidence; three (3) CDs (labeled "CD 2 of 3") that contain the Highly Confidential Version of the Opening Evidence and certain work papers; and three (3) CDs (labeled "CD 3 of 3") that contain the remainder of the work papers.

I have enclosed one additional copy of each pleading for stamp and return. Kindly date-stamp the additional copy for return to this office by messenger.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey O. Moreno'.

Jeffrey O. Moreno
Counsel for M&G Polymers USA, Inc.

Enclosures

cc: Counsel for defendant CSX Transportation, Inc. (cover letter and Motion for Leave to File Late only; counsel for CSXT was served with the Opening Evidence and all work papers on Monday June 6)

229733

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

JUN 07 2011

**Part of
Public Record**

Docket No. NOR 42123



M & G POLYMERS USA, LLC

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

MOTION FOR LEAVE TO LATE FILE

M & G Polymers USA, LLC ("M&G") hereby files this Motion for Leave to Late File ("Motion") pursuant to 49 CFR § 1117.1. M&G requests that the Surface Transportation Board ("Board") accept its Opening Market Dominance Evidence ("Opening Evidence"), which is being filed today under separate cover, one day late. In support hereof, M&G states as follows:

Under the procedural schedule adopted by the Board on May 6, 2011, the Opening Evidence of M&G was due yesterday, June 6, 2011. The Opening Evidence is over 500 pages, and exceeds the size of documents allowed via electronic filing. Therefore, paper copies were necessary.

M&G spent June 6th engaged in the final stages of the printing, assembly, and production process. Unfortunately, unforeseen technical difficulties arose late in the day with the photocopying and document scanning process that prevented M&G from completing production of its Opening Evidence before the Board's 5:00 p.m. filing deadline. M&G's counsel contacted Board staff prior to 5 p.m. to inform the Board of the production difficulties. M&G also

attempted to file the Public Version of its Opening Evidence on time, but the courier arrived at the Board a few minutes after 5:00 p.m., and therefore was unable to file the Public Version.

M&G respectfully requests leave of the Board to file its Opening Evidence today, one day late. Good cause exists to grant this Motion. Board acceptance of the Opening Evidence will not cause prejudice to defendant CSX Transportation, Inc. ("CSXT"). M&G served CSXT outside counsel with the Opening Evidence on Monday June 6, including the Highly Confidential Version, the Public Version, and all Work Papers. Therefore, CSXT received the Opening Evidence on the appropriate day under the Board's procedural schedule. Good cause also exists due to the unforeseen technical difficulties that prevented M&G from filing before the deadline.

For all of the above reasons, M&G respectfully requests that the Board grant leave to late file.

Respectfully submitted,



Jeffrey O. Moreno
David A. Benz
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036
(202) 331-8800

June 7, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of June 2011 the foregoing has been served upon the following persons via the means described below:

via electronic mail and first class mail to:

G. Paul Moates
Paul A Hemmersbaugh
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

Counsel for CSX Transportation, Inc.



Jeffrey O. Moreno