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April 19, 2011

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

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

Dear Ms. Brown:

M&G Polymers USA, LLC ("M&G") requests leave to file this brief letter in reply to "CSX Transportation, Inc.'s Response to M&G Polymers USA, LLC's Withdrawal of Opposition to Bifurcation Request and Motion to Modify Procedural Schedule" ("CSXT Reply"). Because the CSXT Reply proposes a different procedural schedule than M&G has proposed, M&G desires to respond in order to provide a complete record.

CSXT would extend its period to submit reply evidence from 30 days to 60 days, even though CSXT's original proposal to the Board in its January 27 Motion contemplated only 28 days and the Board's recent decision in *TOTAL Petrochemicals USA, Inc. v. CSX Transportation, Inc.*, STB Docket No. 42121 (April 5, 2011) ("*TPI*"), provides 32 days. Although the CSXT Reply, note 1, contemplates that "the *TPI* schedule should be manageable," CSXT does not explain why the same schedule is not manageable in this proceeding, except to assert that CSXT's experts and counsel are busy working on market dominance evidence in *TPI*. It is not at all clear what they are busy doing, since *TPI* will not file its opening evidence until May 5th. Nevertheless, if any counsel would be burdened by this schedule, it is the *TPI* and M&G counsel who must prepare opening evidence in both cases separated by just one month. Moreover, M&G's market dominance presentation should be even more manageable than *TPI*'s, because M&G's captivity to CSXT is primarily at two origins, whereas *TPI*'s captivity is at 105 destinations. Finally, CSXT already has a very good sense of what *TPI* and M&G will submit for their market dominance evidence based upon their respective replies to CSXT's bifurcation motions in both proceedings. Therefore, CSXT's claim that it needs more time in this proceeding simply is not credible.

Finally, M&G's proposed schedule is carefully calibrated with the *TPI* schedule to eliminate any overlapping period in which counsel and consultants for *TPI*, M&G, and CSXT must work on preparing evidence in both cases. This is what makes an expedited schedule work in a fair manner. Even under the expedited schedule proposed by M&G, bifurcation is likely to add at least six months to the procedural, which is six additional months that M&G must pay CSXT's punitively high tariff rates. Indeed, by the time this proceeding concludes, the tariff rate

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premium paid by M&G will far exceed its out-of-pocket litigation costs. Therefore, any extension of the procedural schedule is highly prejudicial to M&G.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey O. Moreno". The signature is fluid and cursive, with the first name being the most prominent.

Jeffrey O. Moreno

Cc: G. Paul Moates
Paul A. Hemmersbaugh