

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

M&G POLYMERS USA, LLC)

Complainant,)

v.)

CSX TRANSPORTATION, INC.)

Defendant.)

Docket No. NOR 42123

233499

ENTERED
Office of Proceedings
December 13, 2012
Part of
Public Record

MOTION TO DISMISS SECOND MOTION TO COMPEL

Complainant M&G Polymers USA, LLC (“M&G”) hereby moves to dismiss its Second Motion to Compel, which was filed August 2, 2012 in this proceeding. In the Second Motion to Compel, M&G had requested that the Surface Transportation Board (“Board”) compel defendant CSX Transportation, Inc. (“CSXT”) to update certain discovery responses given the passage of more than two years since the close of discovery and the Board’s decision to bifurcate the market dominance and rate reasonableness phases of this case. CSXT had opposed the motion in a pleading filed August 13, 2012. In a decision served on August 23, 2012, the Board held the motion in abeyance because the discovery requests pertained to the rate reasonableness phase of the case, which the Board previously had held in abeyance pending a decision on market dominance. Aug. 23 Decision, p. 3.

As part of their agreement to a procedural schedule on rate reasonableness, which has been filed concurrent with this Motion, M&G and CSXT have resolved their differences regarding the updating of discovery responses in this proceeding. CSXT has agreed to update its discovery responses for traffic volume, revenue, and density data, and forecasts, covering 2010,

2011, and such portion of 2012 as is reasonably available at time the Board issues a final market dominance decision in this case. Furthermore, other than the information that CSXT has agreed to update, neither party will use private information in the rate reasonableness phase of this case that was not previously produced prior to the previous close of discovery on December 15, 2010.

Under separate cover today, M&G and CSXT are filing a Joint Motion for Procedural Schedule which includes a specific date by which CSXT will update its discovery responses.

WHEREFORE, M&G respectfully requests that the Board grant this Motion to Dismiss the Second Motion to Compel, without prejudice to M&G's right to file another such motion should it become necessary or appropriate.

Respectfully submitted,



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December 13, 2012

CERTIFICATE OF SERVICE

I hereby certify that this 13th day of December 2012, I served a copy of the foregoing upon counsel for defendant CSXT via e-mail and first class mail at the address below:

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