

August 16, 2010

*via electronic filing*

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

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

Dear Ms. Brown:

Enclosed for filing in the above-captioned case please find the First Amended Complaint of M&G Polymers USA LLC. This First Amended Complaint is materially the same as the original Complaint filed by M&G on June 18, 2010, except that Exhibit A has been modified as follows:

1. Lane 5 of the original Exhibit A has been deleted.
2. Lanes 7, 12, and 16 of the First Amended Exhibit A have been added.

Furthermore, Exhibit B has been modified as follows:

1. Lanes 6, 10, 24, 37, and 53 of the original Exhibit B have been deleted.
2. Lanes 6 and 12 of the First Amended Exhibit B have been added.

These changes result in the deletion of six lanes from the original Complaint, and the addition of five lanes in the First Amended Complaint. References to the Canadian National Railway ("CN") in the Amended Complaint have also been removed due to the dismissal of CN as a defendant.

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

Sincerely,



Jeffrey O. Moreno  
David E. Benz  
*Counsel for M&G Polymers USA LLC*

Enclosure

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

M & G POLYMERS USA, LLC	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. NOR 42123
	)	
CSX TRANSPORTATION, INC.	)	
	)	
Defendant.	)	
	)	

**FIRST AMENDED COMPLAINT**

COMES NOW Complainant, M & G Polymers USA, LLC (“M&G”), 450 Gears Road, Suite 240, Houston, TX 77067, pursuant to 49 CFR § 1111.2(a), and files this First Amended Complaint against Defendant CSX Transportation, Inc. (“CSXT”), 500 Water Street, Jacksonville, Florida 32202. M&G brings this Amended Complaint pursuant to 49 U.S.C. §§ 10701, 10704, 10707, 11701 and 11704, and 49 C.F.R. Part 1111. M&G requests that the Surface Transportation Board (“STB” or “Board”) prescribe reasonable rates and service terms for Defendant’s transportation of the movements set forth in First Amended Exhibits A and B of this Amended Complaint. M&G asks the Board to award damages, plus interest, to the extent that M&G has paid or will pay common carrier rates in excess of a reasonable maximum rate for such transportation, beginning on January 1, 2010. M&G asks this Board to determine the reasonableness of CSXT’s rates using the constrained market pricing principles and procedures adopted in *Coal Rate Guidelines—Nationwide*, Ex Parte No. 347 (Sub-No. 1), 1 I.C.C. 2d 520 (1985), as further refined and applied in subsequent decisions issued by the Interstate Commerce Commission and the Board.

In support of this Amended Complaint, M&G states as follows:

**The Parties**

1. M&G is a corporation organized under the laws of the State of Delaware, with its principal place of business in Apple Grove, West Virginia. M&G is part of M&G Group, which is the world's largest producer of polyethylene terephthalate ("PET") for packaging applications and a technological leader in the polyester market. M&G produces PET in North America at Apple Grove, WV and Altamira, Mexico. M&G is a major user of rail service to transport its products to customers throughout the continental United States, Canada and Mexico.

2. CSXT is a Class I common and contract carrier by railroad that engages in the transportation of property in interstate and intrastate commerce. Its headquarters are in Jacksonville, Florida. CSXT is subject to the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. §§ 10101 *et seq.*) and to the jurisdiction of the Board.

**Description of the Issue Movements**

3. In this Amended Complaint, M&G challenges the reasonableness of CSXT's rates for the movement of PET between 68 origin and destination pairs set forth in First Amended Exhibits A and B. Each origin is either an M&G production facility or a storage location.

4. CSXT transports the commodities between the points identified in First Amended Exhibit A in single line service.

5. CSXT transports the commodities between the points identified in First Amended Exhibit B in joint line service. CSXT has published AAR Accounting Rule 11 rates for these movements.

### **The Challenged Rates**

6. Prior to January 1, 2009, CSXT transported PET between the points identified in First Amended Exhibits A and B pursuant to a 10 year contract. When M&G and CSXT entered into negotiations for a new contract in late 2008, just as the economy was tumbling into a severe recession, M&G was shocked by the magnitude of the rate increases demanded by CSXT. The parties continued negotiating into 2009, beyond the expiration of the contract. In February 2009, with no real option but to pay the rates demanded by CSXT, M&G signed a one-year contract with CSXT under protest. That contract expired on December 31, 2009.

7. In October 2009, M&G and CSXT entered into negotiations for a new contract to become effective on January 1, 2010. CSXT demanded additional significant rate increases above and beyond the substantial increases imposed only a year earlier. Because the parties have been unable to agree upon contract rates, M&G has been paying CSXT's tariff rates since January 1, 2010, while continuing to negotiate with CSXT. Although those tariff rates are higher than CSXT's best contract offer, M&G has paid those rates in the hope that it still could negotiate a mutually acceptable contract with CSXT.

8. The parties have engaged in at least six face-to-face negotiation meetings since October 2009, in addition to numerous phone calls and written exchanges. A February 2010 meeting included the Chief Executive Officers of both M&G and CSXT. Although CSXT expressed a new understanding of M&G's business and promised to provide a new contract proposal, the proposal that CSXT submitted a week later contained very few changes from CSXT's pre-meeting proposal. At the most recent meeting between M&G and CSXT, on June 4, 2010, CSXT agreed to submit a new contract proposal in an attempt to find middle ground. That

proposal, however, also contained few changes from a proposal that M&G had previously rejected.

9. The CSXT tariff rates that M&G has been paying for the movements in First Amended Exhibits A and B since January 1, 2010, currently produce R/VC ratios that range from 248% to 524%. Of the 68 lanes in First Amended Exhibits A and B, 1 has an R/VC ratio greater than 500%, 35 have R/VC ratios between 400% and 500%, and 25 have R/VC ratios between 300% and 400%.

10. After seven months of negotiations, including five months of paying tariff rates, it has become clear to M&G that it cannot obtain reasonable rates from CSXT through negotiations. Therefore, M&G has elected to initiate this regulatory challenge to the reasonableness of CSXT's rates, which is the last resort of a captive shipper.

#### **Jurisdictional Allegations**

11. CSXT possesses market dominance over the movements in First Amended Exhibits A and B. Therefore, pursuant to 49 U.S.C. § 10707, the Board has jurisdiction over the rates and services provided by CSXT and challenged by M&G as unreasonable.

12. The rates charged by CSXT and challenged by M&G for each of the movements in First Amended Exhibits A and B exceed 180 percent of the variable cost for the service requested by M&G, as determined in accordance with 49 U.S.C. § 10707(d)(1).

13. There is a lack of effective competition from other rail carriers for each of the movements in First Amended Exhibits A and B because CSXT is the only rail carrier that provides service at either the origin or the destination. There is a lack of effective competition from non-rail modes for each of the movements in First Amended Exhibits A and B.

### **Requested Relief**

14. CSXT's common carrier rates for handling the movements in First Amended Exhibits A and B are unreasonable and violate 49 U.S.C. §§ 10701(d)(1) and 10702, which require CSXT to establish reasonable rates. The Board should order CSXT to cease this violation and it should prescribe maximum reasonable rates pursuant to 49 U.S.C. § 10704(a)(1).

15. The Board should award reparations to M&G, as provided under 49 U.S.C. § 11704(b). The reparations should compensate M&G for any and all amounts paid in excess of the reasonable rates prescribed by the Board pursuant to this proceeding, plus interest.

16. The Board should prescribe a maximum reasonable rate and award reparations for a combined period of ten years, beginning January 1, 2010.

17. This Amended Complaint includes any and all adjustments to the challenged rates, including adjustments to the applicable fuel surcharges, and any new rates established by CSXT for the services described herein.

WHEREFORE, M&G Polymers USA, Inc. prays that the Board:

- (1) require Defendant CSX Transportation, Inc. to answer the charges alleged herein;
- (2) assign this Amended Complaint for hearing under 49 C.F.R. Part 1111 and the stand-alone cost approach adopted in *Coal Rate Guidelines—Nationwide*, Ex Parte No. 347 (Sub-No. 1), 1 I.C.C. 2d 520 (1985);
- (3) after due hearing and investigation, find that the CSXT's common carrier rates applicable to the transportation of the commodities and movements in First Amended Exhibits A and B of this Amended Complaint are unreasonable;

(4) prescribe just and reasonable rates and related rules and service terms for the future applicable to the rail transportation of the M&G traffic in First Amended Exhibits A and B, pursuant to 49 U.S.C. §§ 10704(a)(1) and 11701(a);

(5) award M&G reparations, plus applicable interest, in accordance with 49 U.S.C. § 11704 for unlawful rates set by CSXT for the period beginning January 1, 2010 to the effective date of a decision by the Board prescribing just and reasonable rates; and

(6) grant such other and further relief to M&G as the Board may deem just and proper under the circumstances.

Respectfully submitted,



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August 16, 2010

**CSX LOCAL MOVES**

Origin		Destination		Route	Commodity Description	STCC	CSXT Rate FSC @ \$0.23		CSXT Rate		R/V/C Ratio
City	ST	City	ST				2Q10	2Q10	2Q10	Incl. FSC	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	
1. APPLE GROVE	WV	BELPRE	OH	CSXT	Polyethylene Terephthalate	28-211-56	\$2,585	\$22	\$2,607	359%	
2. APPLE GROVE	WV	BORDENTOWN	NJ	CSXT	Polyethylene Terephthalate	28-211-56	\$5,800	\$145	\$5,945	281%	
3. APPLE GROVE	WV	CARTERSVILLE	GA	CSXT	Polyethylene Terephthalate	28-211-56	\$5,608	\$122	\$5,730	286%	
4. APPLE GROVE	WV	CLIFTON FORGE	VA	CSXT	Polyethylene Terephthalate	28-211-56	\$3,896	\$58	\$3,954	379%	
5. APPLE GROVE	WV	DEVON / CINCINNATI	KY	CSXT	Polyethylene Terephthalate	28-211-56	\$2,794	\$44	\$2,838	401%	
6. APPLE GROVE	WV	ORLANDO	FL	CSXT	Polyethylene Terephthalate	28-211-56	\$7,929	\$225	\$8,154	316%	
7. APPLE GROVE	WV	PARIS	IL	CSXT	Polyethylene Terephthalate	28-211-56	\$5,457	\$108	\$5,565	373%	
8. APPLE GROVE	WV	PARKERSBURG	WV	CSXT	Polyethylene Terephthalate	28-211-56	\$2,585	\$22	\$2,607	360%	
9. APPLE GROVE	WV	RAINS	SC	CSXT	Polyethylene Terephthalate	28-211-56	\$5,341	\$144	\$5,485	247%	
10. APPLE GROVE	WV	ROCHESTER	NY	CSXT	Polyethylene Terephthalate	28-211-56	\$8,584	\$127	\$8,711	524%	
11. BELPRE	OH	APPLE GROVE	WV	CSXT	Polyethylene Terephthalate	28-211-56	\$3,151	\$22	\$3,173	437%	
12. BELPRE	OH	BORDENTOWN	NJ	CSXT	Polyethylene Terephthalate	28-211-56	\$5,231	\$128	\$5,359	320%	
13. BELPRE	OH	CARTERSVILLE	GA	CSXT	Polyethylene Terephthalate	28-211-56	\$6,512	\$139	\$6,651	302%	
14. BELPRE	OH	DEVON	KY	CSXT	Polyethylene Terephthalate	28-211-56	\$3,837	\$66	\$3,903	351%	
15. BELPRE	OH	ORLANDO	FL	CSXT	Polyethylene Terephthalate	28-211-56	\$7,964	\$247	\$8,211	255%	
16. BELPRE	OH	PARIS	IL	CSXT	Polyethylene Terephthalate	28-211-56	\$5,119	\$130	\$5,249	311%	
17. PARKERSBURG	WV	APPLE GROVE	WV	CSXT	Polyethylene Terephthalate	28-211-56	\$2,585	\$22	\$2,607	360%	
18. RAINS	SC	CARTERSVILLE	GA	CSXT	Polyethylene Terephthalate	28-211-56	\$4,091	\$99	\$4,190	295%	

**CSX JOINT MOVES**

	Origin		Destination		Route (5)	Commodity Description (6)	STCC (7)	CSXT Rate		FSC @ \$0.23		CSXT Rate		R/V C Ratio (11)
	City (1)	ST (2)	City (3)	ST (4)				2010 (8)	2010 (9)	2010 (10)	Incl. FSC			
1.	ALTAMIRA	TM	APPLE GROVE	WV	CHGO-CSXT	Polyethylene Terephthalate	28-211-56	\$5,577	\$111	\$5,688	430%			
2.	ALTAMIRA	TM	BELPRE	OH	CHGO-CSXT	Polyethylene Terephthalate	28-211-56	\$5,487	\$133	\$5,620	370%			
3.	ALTAMIRA	TM	CAMBRIDGE	OH	CHGO-CSXT-CLMBO-CUOH	Polyethylene Terephthalate	28-211-56	\$5,960	\$92	\$6,052	432%			
4.	ALTAMIRA	TM	CARTERSVILLE	GA	NEWOR-CSXT	Polyethylene Terephthalate	28-211-56	\$5,841	\$125	\$5,966	416%			
5.	ALTAMIRA	TM	CLIFTON FORGE	VA	NEWOR-CSXT	Polyethylene Terephthalate	28-211-56	\$7,126	\$294	\$7,420	248%			
6.	ALTAMIRA	TM	ORLANDO	FL	NEWOR-CSXT	Polyethylene Terephthalate	28-211-56	\$7,411	\$175	\$7,586	403%			
7.	APPLE GROVE	WV	AGUILA	AZ	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
8.	APPLE GROVE	WV	ALLEN TOWN	PA	CSXT-HAGTN	Polyethylene Terephthalate	28-211-56	\$5,299	\$94	\$5,393	460%			
9.	APPLE GROVE	WV	ALTAMIRA	TM	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
10.	APPLE GROVE	WV	CHAMPAIGN	IL	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
11.	APPLE GROVE	WV	CHAMPAIGN	IL	CSXT-EFHAM	Polyethylene Terephthalate	28-211-56	\$5,565	\$104	\$5,669	455%			
12.	APPLE GROVE	WV	DARLINGTON	SC	CSXT-FLORENCE	Polyethylene Terephthalate	28-211-56	\$6,191	\$182	\$6,373	328%			
13.	APPLE GROVE	WV	DONEY SPUR	PQ	CSXT-TOLED	Polyethylene Terephthalate	28-211-56	\$2,876	\$66	\$2,942	322%			
14.	APPLE GROVE	WV	FRANKLIN	IN	CSXT-LOUVL	Polyethylene Terephthalate	28-211-56	\$3,677	\$68	\$3,745	408%			
15.	APPLE GROVE	WV	FREMONT	OH	CSXT-CLMBO	Polyethylene Terephthalate	28-211-56	\$2,945	\$38	\$2,983	451%			
16.	APPLE GROVE	WV	GLENDALE	AZ	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
17.	APPLE GROVE	WV	HAMILTON	ON	CSXT-TOLED	Polyethylene Terephthalate	28-211-56	\$2,876	\$66	\$2,942	322%			
18.	APPLE GROVE	WV	HAVRE DE GRACE	MD	CSXT-HAGTN	Polyethylene Terephthalate	28-211-56	\$5,299	\$94	\$5,393	460%			
19.	APPLE GROVE	WV	HAZLETON	PA	CSXT-HAGTN	Polyethylene Terephthalate	28-211-56	\$5,299	\$94	\$5,393	460%			
20.	APPLE GROVE	WV	HEBRON	OH	CSXT-CLMBO-CUOH	Polyethylene Terephthalate	28-211-56	\$3,856	\$46	\$3,902	401%			
21.	APPLE GROVE	WV	LENEXA	KS	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
22.	APPLE GROVE	WV	LITTLE ROCK	AR	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
23.	APPLE GROVE	WV	MEMPHIS	TN	CSXT-MEMPH	Polyethylene Terephthalate	28-211-56	\$5,960	\$163	\$6,123	342%			
24.	APPLE GROVE	WV	NICHOLASVILLE	KY	CSXT-CLMBO	Polyethylene Terephthalate	28-211-56	\$2,945	\$38	\$2,983	451%			
25.	APPLE GROVE	WV	ROCKFORD	IL	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
26.	APPLE GROVE	WV	ROGERS	MN	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
27.	APPLE GROVE	WV	RUSSELLVILLE	AR	CSXT-ESTL	Polyethylene Terephthalate	28-211-56	\$5,565	\$120	\$5,685	408%			
28.	APPLE GROVE	WV	ST JEAN	PQ	CSXT-ESTL	Polyethylene Terephthalate	28-211-56	\$2,876	\$66	\$2,942	322%			
29.	APPLE GROVE	WV	SUISUN FAIRFIELD	CA	CSXT-ESTL	Polyethylene Terephthalate	28-211-56	\$5,565	\$120	\$5,685	408%			
30.	APPLE GROVE	WV	SWEETWATER	TX	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
31.	APPLE GROVE	WV	TEXARKANA	TX	CSXT-ESTL	Polyethylene Terephthalate	28-211-56	\$5,565	\$120	\$5,685	408%			
32.	APPLE GROVE	WV	UNIVERSITY PARK	IL	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
33.	APPLE GROVE	WV	VADO	NM	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
34.	APPLE GROVE	WV	W CHICAGO	IL	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
35.	APPLE GROVE	WV	WAYNESVILLE	NC	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,524	\$111	\$5,635	426%			
36.	BELPRE	OH	AGUILA	AZ	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$3,896	\$77	\$3,973	394%			
37.	BELPRE	OH	ALLEN TOWN	PA	CSXT-HAGTN	Polyethylene Terephthalate	28-211-56	\$5,698	\$133	\$5,831	384%			
38.	BELPRE	OH	CAMBRIDGE	ON	CSXT-TOLED	Polyethylene Terephthalate	28-211-56	\$4,661	\$73	\$4,734	483%			
39.	BELPRE	OH	FRANKLIN	IN	CSXT-LOUVL	Polyethylene Terephthalate	28-211-56	\$4,063	\$88	\$4,151	375%			
40.	BELPRE	OH	FREMONT	OH	CSXT-CLMBO	Polyethylene Terephthalate	28-211-56	\$5,112	\$90	\$5,202	466%			
41.	BELPRE	OH	HAZLETON	PA	CSXT-HAGTN	Polyethylene Terephthalate	28-211-56	\$3,499	\$60	\$3,559	415%			
42.	BELPRE	OH	LENEXA	KS	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$4,661	\$73	\$4,734	483%			
								\$5,698	\$133	\$5,831	384%			

**CSX JOINT MOVES**

<u>Origin</u>		<u>Destination</u>		<u>ST</u> (2)	<u>Route</u> (5)	<u>Commodity Description</u> (6)	<u>STCC</u> (7)	<u>CSXT Rate</u>		<u>FSC @ \$0.23</u>		<u>CSXT Rate</u>		<u>RVC Ratio</u> (11)
<u>City</u> (1)	<u>ST</u> (2)	<u>City</u> (3)	<u>ST</u> (4)					<u>2Q10</u> (8)	<u>2Q10</u> (9)	<u>2Q10</u> (10)	<u>2Q10</u> (10)			
43. BELPRE	OH	RUSSELLVILLE	AR	CSXT-ESTL	Polyethylene Terephthalate	28-211-56	\$6,114	\$143	\$6,257		\$6,257	394%		
44. BELPRE	OH	ST JEAN	PQ	CSXT-TOLED	Polyethylene Terephthalate	28-211-56	\$4,063	\$88	\$4,151		\$4,151	375%		
45. BELPRE	OH	SUISUN FAIRFIELD	CA	CSXT-ESTL	Polyethylene Terephthalate	28-211-56	\$6,114	\$143	\$6,257		\$6,257	394%		
46. BELPRE	OH	SWEETWATER	TX	CSXT-CHGO	Polyethylene Terephthalate	28-211-56	\$5,698	\$133	\$5,831		\$5,831	384%		
47. SPRING	TX	APPLE GROVE	WV	ESTL-CSXT	Polyethylene Terephthalate	28-211-56	\$5,409	\$120	\$5,529		\$5,529	397%		
48. SWEETWATER	TX	APPLE GROVE	WV	CHGO-CSXT	Polyethylene Terephthalate	28-211-56	\$5,577	\$111	\$5,688		\$5,688	430%		
49. SWEETWATER	TX	CARTERSVILLE	GA	NEWOR-CSXT	Polyethylene Terephthalate	28-211-56	\$5,841	\$125	\$5,966		\$5,966	416%		
50. SWEETWATER	TX	CLIFTON FORGE	VA	NEWOR-CSXT	Polyethylene Terephthalate	28-211-56	\$7,126	\$294	\$7,420		\$7,420	248%		

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 16th day of August 2010 the foregoing First Amended Complaint has been served by electronic mail and first class mail on:

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



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Jeffrey O. Moreno