

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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<p>M&amp;G POLYMERS USA, LLC.</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">v.</p> <p>CSX TRANSPORTATION, INC. and SOUTH CAROLINA CENTRAL RAILROAD COMPANY</p> <p style="text-align:center">Defendants.</p>	<p style="text-align:center">Docket No. NOR 42123</p>
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**CSX TRANSPORTATION, INC.’S REPLY TO M&G POLYMERS USA, LLC’S  
MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Defendant CSX Transportation, Inc. (“CSXT”) respectfully submits this Reply to Complainant M&G Polymers USA, LLC’s Motion for Leave to File a Second Amended Complaint (“Motion”). CSXT does not oppose the Motion, but files this Reply to urge the Board to view with skepticism any future attempts by M&G to amend its Complaint.

CSXT does not disagree with M&G’s statement that “proper adjudication of this case requires that all relevant parties be joined.” Motion at 3. In this case, several of the movements whose rates M&G challenged in its initial Complaint were movements in which both CSXT and another railroad provided line-haul service. For example, Movement 3 of Exhibit B to M&G’s initial complaint purported to challenge the reasonableness of CSXT’s rate to transport polyethylene terephthalate from Chicago<sup>1</sup> to Cambridge, Ohio. *See* M&G Complaint Ex. B at 1 (filed June 18, 2010). CSXT does not provide direct all-rail service from Chicago to Cambridge – rather, for M&G’s traffic to be transported from Chicago to Cambridge, CSXT

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<sup>1</sup> While the Complaint lists Altamira, TM as the origin for Movement 3 (presumably because the shipments in question ultimately originate at an M&G plant in Mexico), the Complaint specifies that Movement 3 is interchanged to CSXT at Chicago.

must move shipments from Chicago to Columbus, Ohio, where CSXT interchanges traffic with the Columbus & Ohio River Railroad Company (“CUOH”), which provides line-haul service to Cambridge. CSXT’s tariff both publishes a rate from Chicago to Columbus for the CSXT-only portion of this route and a rate from Chicago to Cambridge in which CUOH participates. M&G’s Complaint challenged the rate for the joint CSXT/CUOH movement from Chicago to Cambridge, but only named CSXT as a defendant. Significantly, M&G’s initial Complaint named Canadian National (“CN”) as a co-defendant for movements in which that carrier participated.<sup>2</sup> However, M&G did not name as defendants any of the other carriers who participate with CSXT in the other joint line movements. For this reason, CSXT’s Answer to M&G’s Complaint pointed out that M&G did not appear to have “joined all necessary parties to this litigation.” CSXT Answer to Initial Complaint at 1 (filed July 8, 2010).

M&G’s First Amended Complaint, which deleted six lanes from its initial Complaint and added five more, again challenged lanes in which rail service is provided by CSXT in joint line service with another line haul carrier, but failed to include the participating short line carrier as a party to the case. *See* M&G First Amended Complaint (filed Aug. 16, 2010), Ex. B Lanes 3, 12, 14, & 20. Once again, CSXT’s Answer to the First Amended Complaint reiterated that M&G did not appear to have “joined all necessary parties to this litigation.” CSXT Answer to First Amended Complaint at 2 (filed Sept. 7, 2010).

The Second Amended Complaint appears designed to correct M&G’s erroneous attempt to challenge joint rates without naming as defendants all the line-haul carriers who participate in that rate. For some of the lanes in which M&G challenged the rate for a joint

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<sup>2</sup> M&G subsequently reached an agreement with CN and moved to dismiss CN from the complaint. *See* Decision, *M&G Polymers, LLC v. CSX Transportation, Inc.*, STB Docket No. 42123, at 1 (July 22, 2010).

movement – such as the Chicago-Cambridge movement involving CUOH discussed above – M&G amended its complaint to challenge the rate for the CSXT-only portion of the movement.<sup>3</sup> However, for Lane 12 in Exhibit B – a movement from Apple Grove, WV to Darlington, SC in which the South Carolina Central Railroad Company (“SCRF”) participates as a line haul carrier – M&G chose to add SCRF as a defendant and maintain M&G’s challenge to the entire Apple Grove-Darlington movement.

While CSXT does not oppose M&G’s motion for leave to amend its Complaint, in order to complete the record CSXT is submitting the following response to two assertions in the Motion. First, M&G’s claim that it does not believe that SCRF is a necessary party to a rate challenge to a movement in which SCRF participates is contradicted by M&G’s own actions in filing this Motion. Moreover, it is hardly a controversial proposition that, if M&G intends to challenge through rates in which both CSXT and another rail carrier participate as line haul carriers, it must bring its complaint against both carriers. Indeed, that is exactly what M&G did in its initial complaint when it named Canadian National as a co-defendant. There is no reason why other carriers like the SCRF should be treated differently.

Second, while it is unclear what M&G means when it says that “SCRF stated that it could not enter into a contract,” whether or not SCRF and M&G wish to enter into a contract is a business decision within the control of SCRF and M&G. CSXT is not aware of any contractual

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<sup>3</sup> M&G presumably has obtained contracts with connecting carriers for the non-CSXT portion of these movements, as is required by the bottleneck exception to the general rule that a complainant may not challenge the reasonableness of a rate for a segment of a joint through route. *See Central Power & Light Co. v. Southern Pac. Transp. Co.*, STB Docket No. 41242 (served Dec. 31, 1996), *aff’d on reconsideration* (Apr. 30, 1997). Under the bottleneck exception, if a complainant has obtained contracts for portions of a through movement, the complainant may bring a challenge to the reasonableness of the rate for the segment of the movement not subject to contract.

obligations that would preclude SCRF from negotiating a separate contract rate for its portion of a M&G movement.

While CSXT does not oppose the Motion for Leave to File the Second Amended Complaint, the Board should make clear that it will look with disfavor on any future attempts by M&G to amend its pleadings. This case was filed nearly five months ago, and discovery will close in little more than a month. Additional amendments – and particularly any attempts to add more lanes to the Complaint – would prejudice CSXT and potentially jeopardize the procedural schedule. If the Board grants M&G’s Motion, the Board should make clear that it will view future attempts to amend the Complaint with skepticism.<sup>4</sup>

Respectfully submitted,



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<sup>4</sup> CSXT will not object to M&G’s voluntary dismissal of movements, lanes, or parties that are named in the M&G complaint but not necessary to grant the relief M&G seeks in this rate case, so long as M&G seeks such dismissal in a timely manner that does not prejudice CSXT and in all events prior to M&G’s filing of its Opening Evidence in this case.

## CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2010, I caused a copy of the foregoing Reply to Motion for Leave to File Second Amended Complaint to be served on the following party by hand delivery and electronic mail:

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