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228691

January 27, 2011

**EXPEDITED HANDLING REQUESTED**

**By Hand Delivery**

Rachel D. Campbell  
Director  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423



Re: M&G Polymers USA, LLC v. CSX Transportation, Inc., STB Docket No. 42123

Dear Ms. Campbell:

Enclosed for filing in the above-referenced matter is Defendant CSX Transportation Inc.'s ("CSXT's") Motion for Expedited Determination of Jurisdiction over Challenged Rates ("Motion"). The filing includes:

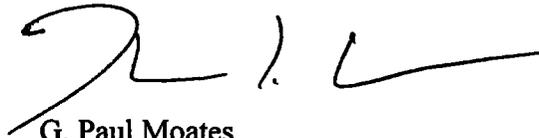
- 1) An original and ten copies of the Highly Confidential version of CSXT's Motion. Material that is designated Highly Confidential pursuant to the Board's August 4, 2010 Protective Order ("Protective Order") is marked with double braces (e.g., "{{}}"). Material designated Confidential pursuant to the Protective Order is marked with single braces (e.g., "{}"). These materials should not be placed in the Board's public docket or on its website.
- 2) An original and ten copies of the Public version of CSXT's Motion. Material that is designated Highly Confidential or Confidential pursuant to the Board's Protective Order is redacted from the Public version. These materials may be placed in the Board's public docket and posted on its website.
- 3) Three disks containing workpapers and an electronic copy of the Highly Confidential and Public versions of the Motion. CSXT's workpapers are designated Highly Confidential pursuant to the Protective Order, and should not be placed in the Board's public docket or on its website.

Rachel D. Campbell  
Page 2

Please stamp one copy of each version of CSXT's Motion to indicate it has been received and filed and return the stamped copies with our messenger for our files. Thank you for your assistance in this matter.

If you have questions, please contact the undersigned.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a horizontal line and a small flourish.

G. Paul Moates  
Matthew J. Warren

Enclosures

cc: Jeffrey O. Moreno

**PUBLIC VERSION**

228691

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

M&G POLYMERS USA, LLC

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant

**EXPEDITED HANDLING  
REQUESTED**

Docket No. NOR 42123

**MOTION FOR EXPEDITED DETERMINATION OF JURISDICTION OVER  
CHALLENGED RATES**

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Dated: January 27, 2011

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

M & G POLYMERS USA, LLC	)	
	)	
Complainant,	)	<b>EXPEDITED HANDLING REQUESTED</b>
	)	
v.	)	Docket No. NOR 42123
	)	
CSX TRANSPORTATION, INC.	)	
	)	
Defendant	)	
	)	

**MOTION FOR EXPEDITED DETERMINATION OF JURISDICTION OVER  
CHALLENGED RATES**

Pursuant to 49 C.F.R. § 1117.1 and other applicable law and authority, Defendant CSX Transportation, Inc. (“CSXT”) respectfully submits this Motion for Expedited Determination of Jurisdiction Over Challenged Rates. Complainant M & G Polymers USA, LLC (“M&G”) has brought one of the most complex Stand Alone Cost (“SAC”) cases ever considered by the Board – a case that involves challenges to CSXT’s common carrier rates for the transportation of polyethylene terephthalate (“PET”) for 68 separate origin-destination pairs that traverse nineteen states as far north as New York, as far south as Florida, and as far west as Louisiana. But in its efforts to obtain a regulatory reduction of CSXT’s common carrier rates, M&G may not sidestep the fundamental prerequisite to the Board’s jurisdiction over the reasonableness of any railroad’s rates: “an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies.” 49 U.S.C. § 10707(a). PET is readily transportable by truck, {{

}} Moreover, M&G could substantially expand its capacity to load trucks at its Apple

Grove facility at minimal expense. As demonstrated by the enclosed proffer, compelling evidence demonstrates that CSXT's service in 32 of the 68 lanes that have been challenged in M&G's First Amended Complaint (which comprise { } of the total carloads M&G shipped over the complaint lanes in 2009) is subject to effective competition from truck or rail-truck transportation alternatives, and therefore that these movements are not subject to the Board's rate reasonableness jurisdiction. Because expedited consideration of jurisdictional issues in this case could limit or even eliminate the need for preparation and consideration of SAC evidence in a case that will likely involve one of the largest Stand Alone Railroads the Board has ever considered, CSXT respectfully submits that the Board should promptly review qualitative market dominance evidence to determine whether it has jurisdiction over the challenged rates before requiring the parties to proceed to submit SAC evidence.

CSXT's Motion is supported by the Verified Statement of Mr. Gordon Heisler, a chemical industry logistics expert with more than 35 years experience, including chemicals and plastics distribution positions with Sunoco Inc. and FMC Industrial Chemicals. Mr. Heisler's analysis demonstrates that PET is readily transported by truck and that {

} See Verified Statement of Gordon R. Heisler

("V.S. Heisler") at 5. Relying on {{

}} Mr. Heisler has identified feasible and cost-effective alternatives to CSXT's rail service for dozens of the Issue Movements and { } of the volume of the complaint lanes. See *id.* at 8-14. Moreover, Mr. Heisler's testimony demonstrates that M&G has the capacity to substantially expand its truck loading capacity at minimal cost. See *id.* at 14-19.

CSXT is presenting Mr. Heisler's analysis as a factual proffer to demonstrate the serious doubts about M&G's ability to meet its burden to prove that CSXT is market dominant

over each of the 68 lanes in the complaint. Market dominance is a threshold jurisdictional question that the Board must resolve before it considers the merits of M&G's rate reasonableness challenges. It is fundamental that agencies – like courts – have authority to act only in matters over which they first determine they have jurisdiction. Particularly where – as here – there is significant doubt as to whether a complainant can meet that threshold burden, the Board should expedite consideration of jurisdictional evidence. Otherwise, there is a significant risk that the parties and the Board will expend substantial amounts of time, effort, and resources developing evidence concerning rates over which the Board lacks jurisdiction at a time when the Board has an unusually busy docket of cases.<sup>1</sup> This case involves 68 separate issue movements that traverse 19 states, and will likely require development and submission of some of the most complex SAC presentations the Board has ever seen. No useful purpose would be served by forcing the parties and the Board to expend the very significant resources that would be required to generate SAC evidence if, as the evidence demonstrates, the Board does not have jurisdiction to determine the reasonableness of many of those rates.

In light of the substantial likelihood that any SAC evidence submitted by the parties will be significantly altered in scope, if not rendered moot altogether, by a ruling that CSXT lacks market dominance over the transportation to which the challenged rates apply, CSXT respectfully submits that the prudent and efficient course of action is for the Board to consider the parties' market dominance evidence – and determine whether the Board has jurisdiction – before the parties submit SAC evidence. *Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc.*, STB Docket No. 42110, is instructive here. There, the Board found that the potential of rail-water alternatives to CSXT's rail service was sufficiently significant to

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<sup>1</sup> At least six separate rate reasonableness cases invoking the SAC constraint are currently pending before the Board.

justify an oral argument dedicated to that issue. By the time that the Board ordered that argument, however, the parties already had expended substantial resources to develop three rounds of Stand-Alone Cost evidence. As the Board knows, the parties reached a negotiated resolution of the *Seminole* case after oral argument of market dominance, but before the Board made any ruling on the SAC evidence filed by the parties. Expedited consideration of market dominance in this case could prevent such a waste of resources.

Under the unopposed procedural schedule proposed by M&G in its January 10, 2011 Motion to Modify Procedural Schedule, M&G’s opening SAC evidence is not due until June 29, 2011 – over six months from now. Those six months leave ample time for the Board to consider whether CSXT has qualitative market dominance over the challenged movements. For example, a schedule like the one suggested below would give the Board nearly two months between the submission of M&G’s Rebuttal Qualitative Market Dominance Evidence and the deadline for Opening SAC evidence to determine whether any of the challenged movements should be dismissed from the case because of lack of market dominance:

M&G Opening Qualitative Market Dominance Evidence	March 21, 2011
CSXT Reply to M&G Qualitative Market Dominance Evidence	April 18, 2011
M&G Rebuttal Evidence on Qualitative Market Dominance	May 2, 2011
Oral Argument on Qualitative Market Dominance	May 2011

This proposed schedule also could accommodate submission of evidence related to market dominance on the one issue movement involving defendant South Carolina Central

Railroad Company (“SCRF”).<sup>2</sup> Alternatively, the Board could hold the procedural schedule for submission of SAC evidence in abeyance in the event that it determined that more time is necessary to consider qualitative market dominance. Whichever approach the Board chooses to take, the substantial questions about M&G’s ability to demonstrate market dominance should be addressed before the parties submit SAC evidence.

**I. THE BOARD DOES NOT HAVE JURISDICTION OVER RATES FOR MOVEMENTS FOR WHICH THERE ARE EFFECTIVE COMPETITIVE OPTIONS.**

The Board has jurisdiction to determine the reasonableness of a transportation rate only if there is “an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies.” 49 U.S.C. § 10707(a).<sup>3</sup> Congress limited the Board’s rate reasonableness authority to transportation for which there is an absence of effective competition because of an “overall congressional intent that ‘competition be recognized as the best control on the ability of railroads to raise rates.’” *Potomac Elec. Power Co. v. Consolidated Rail Corp.*, 367 I.C.C. 532, 536 (1983) (quoting H. Rep. 96-1430, at 89 (1980)). When there is more than one effective competitive option for transportation of traffic at issue, Congress has determined that the market should determine the rates for that transportation, not the Board.

The Board applies this statutory limitation on its jurisdiction by assessing “whether there are any feasible transportation alternatives that could be used for the issue traffic. The Board considers both intramodal competition (from other railroads) and intermodal

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<sup>2</sup> On November 19, 2010, SCRF filed a motion to bifurcate the market dominance determination as to SCRF. The Board has not yet ruled on that motion.

<sup>3</sup> For purposes of this Motion, CSXT does not seek to demonstrate that the challenged rates generate revenue-to-variable cost (“R/VC”) ratios below the 180% quantitative market dominance threshold specified by 49 U.S.C. § 10707(d)(1). CSXT reserves its rights to address any quantitative market dominance issues at a later date should it be necessary to do so.

competition (from other modes of transportation, such as trucks, transload arrangements, barges, or pipelines)." *E.I. du Pont de Nemours & Co. v. CSX Transportation, Inc.*, STB Docket No. 42100, at 2 (June 30, 2008). This case does not involve direct rail-to-rail intramodal competition, because CSXT is the only rail carrier providing rail service to M&G's Apple Grove facility that originates or terminates most of the challenged movements. But the challenged rates are certainly subject to intermodal competition from direct truck shipments and truck-to-rail-shipments. {{

}}

In the attached verified statement, CSXT expert Gordon Heisler has demonstrated feasible and cost-effective alternatives for 32 of the Issue Movements. *See* V.S. Heisler at 8-14. A summary of Mr. Heisler's lane-by-lane analysis is included in Section II. In each instance, Mr. Heisler shows that the costs of the alternative transportation option are comparable to CSXT's rail rate – and in many instances lower than CSXT's rate.

The Board and the ICC before it have recognized on multiple occasions that cost-competitive intermodal competition, like the competitive options Mr. Heisler has identified, constitutes "effective competition" under § 10707(a) and precludes a finding of market dominance. For example, in *Aluminum Association v. Akron, Canton & Youngstown Railroad Company*, 367 I.C.C. 475 (1983), the ICC found that truck transportation was effective competition for the transportation of aluminum even though two-thirds of the challenged aluminum movements moved via rail and despite the complainants' arguments that it would be impractical to move all aluminum by truck. *See id.* at 483-84 ("not all aluminum has to move by

truck for motor carriage to exert competitive pressures on the railroads”). More recently, in *FMC Wyoming* the Board found that the complainant’s ability to convert its facilities to accommodate truck transportation of coke created sufficient competitive pressure to constitute effective competition within the meaning of § 10707(a). *See FMC Wyoming Corp. v. Union Pacific R.R. Co.*, 4 S.T.B. 699, 713 (2000) (holding that “potential for conversion to motor carriage is sufficient to discipline UP’s rail rates”).<sup>4</sup> And in *DuPont*, the Board found that a complainant’s regular use of barges to ship issue traffic created effective competition, despite the complainant’s claims that it could not utilize barges for 100% of its traffic. *DuPont*, STB Docket No. 42110, at 4-5.

Indeed, the evidence of “feasible transportation alternatives” in this case is particularly compelling. This is not a case in which the railroad’s market dominance is in question because of the potential to build access to another carrier’s rail line or to construct dock facilities to receive commodities by water. *See Increased Rates on Coal, Alabama to Boykin, FL*, 364 I.C.C. 263, 266 (1980) (finding that complainant failed to prove market dominance where complainant did not prove it would be impractical to ship by barge and to adapt its facilities to barge unloading); *cf. Seminole Electric Cooperative, Inc. v. CSX Transp., Inc.*, STB Docket No. 42110. Nor is it a case where a complainant that is not currently moving a commodity via truck could conceivably do so. *See FMC Wyoming*, 4 S.T.B. at 713. Rather, it is a case where the complainant {{

}} When, as in this case, a shipper has effective

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<sup>4</sup> *See also Consolidated Papers, Inc. v. Chicago & NW Transp. Co.*, 7 I.C.C.2d 330, 337-38 (1991) (finding that truck transportation was effective competitive option to rail transportation of pulpwood and wood chips).

competitive transportation options, the statute mandates that market competition – not regulatory intervention – determine the applicable transportation rate.

**II. M&G COULD READILY DIVERT MANY RAILCAR SHIPMENTS TO DIRECT TRUCK OR TRUCK-RAIL TRANSLOADS.**

Shipments of PET from M&G’s Apple Grove facility are not “captive” to CSXT’s rail service. On the contrary, M&G loads {{ }} of trucks of PET annually at the Apple Grove facility, and it has the capacity to load { } See V.S. Heisler at 5, 15. In M&G’s own words, {{

}} M&G’s attempt to obscure the jurisdictional obstacles to its rate complaint by failing to utilize viable transportation alternatives does not alter the fact that those options exist and preclude a finding of market dominance.

PET in plastic pellet form is highly conducive to truck transportation. Indeed, from 2007 through the present M&G has shipped at least {{ }} truckloads of the Issue Commodities to various customers. See V.S. Heisler at 5. During the first 11 months of 2010 M&G shipped over {{ }} bulk truck shipments from various origins to various destinations {{ }}. See *id.* {{

}}

As described in detail in Mr. Heisler's verified statement, truck loading at Apple Grove is performed by vacuum pneumatic self-loading trucks that load product from rail hopper cars. *See* V.S. Heisler at 6. These trucks carry all the equipment necessary for loading – no other equipment or special facilities are required. {

} *See id.* Using conservative assumptions, M&G is able to load as many as { } trucks per day from these car spots, and it could increase its loading capacity to { } trucks per day with a one-time capital expense of less than \$200,000. *See id.* at 15, 17.

Not only does the Apple Grove plant have the capacity to accommodate substantial truck shipments, M&G also has {{

}} His analysis demonstrates that there are effective competitive alternatives for at least 32 of the movements addressed by the Complaint. In each case, Mr. Heisler has identified the most competitive alternative based on his expertise in the chemicals industry, his research into applicable rates and potential routings, and his review of documents produced by M&G in discovery. The details of Mr. Heisler's analysis are set forth in his verified statement and in Exhibit 1 to that statement.

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<sup>5</sup> A detailed description of the bulk truck loading process at Apple Grove is contained in Mr. Heisler's Verified Statement at 6 and is illustrated in Exhibit 3.

See V.S. Heisler at 8-14. In addition, Exhibit 2 to Mr. Heisler's Verified Statement maps each of the transportation alternatives set forth in Exhibit 1. For each movement, the maps in Exhibit 2 graphically depict the current CSXT route, the route for alternative transportation, and the costs of each alternative.

The competitive alternatives to CSXT's rail service that Mr. Heisler has identified for the Issue Movements fall into four categories.

- First, a number of movements could be transported by trucks from the origin at Apple Grove or Belpre to the final destination.
- Second, for several routes where CSXT currently transports PET from Apple Grove or Belpre to an interchange point with another carrier, M&G instead could transport product via truck to a transload site at the current interchange point. At the transload site PET could be loaded into hopper cars and tendered to the connecting railroad for delivery to final destination.
- Third, for twelve of the Issue Movements, CSXT currently transports PET from Apple Grove to Chicago for interchange to another carrier for delivery to a western destination. For each of these movements, M&G instead could truck PET to a Lima, Ohio transload site located on the Chicago, Fort Wayne, and Eastern Railroad ("CFER"). At Lima the product could be transloaded into empty hopper cars and transported by the CFER to Chicago for interchange to the connecting carriers.
- Fourth, several movements that CSXT receives at Chicago instead could be received at Chicago by CFER for delivery to the Lima transload facility. From there the product could be transloaded into trucks and delivered to its final destinations.

Each of these competitive options is described further below and in Mr. Heisler's verified statement.

**A. Twelve Movements Are Subject to Effective All-Truck Competition.**

Mr. Heisler's analysis identifies twelve movements for which a direct truck movement from the challenged origin at Apple Grove or Belpre to the final destination is a viable competitive alternative to the CSXT tariff rate (or, for movements that currently move in

interline service, to the combination of the CSXT tariff rate and the rate charged by the connecting rail carrier). *See* V.S. Heisler at 8-10 & Ex. 1.

Mr. Heisler's analysis demonstrates that these alternatives are logistically feasible and economically competitive with all-rail service. For each of the twelve movements Mr. Heisler identifies as being subject to direct truck competition, the distance for a bulk truck shipment is {{

}} Moreover, bulk truck shipments are a cost-competitive alternative to CSXT's rail service on each of these lanes. This evidence of feasible and cost-effective truck competition at the very least creates considerable doubt as to whether M&G can demonstrate that the Board has jurisdiction over these lanes, and provides ample ground for the Board to expedite determination of jurisdictional issues.

**B. Truck-To-Transload-Facility Competitive Alternatives for Six Issue Movements**

In addition, CSXT's rail service for six Issue Movements that are currently transported by CSXT to an interchange point with the Norfolk Southern ("NS") for transportation to final destination is subject to competition from bulk trucks that could transport PET to a transload facility at the current NS interchange point. *See* V.S. Heisler at 11-12. Four of these originate at Apple Grove or Belpre and are transported by CSXT to Hagerstown, Maryland and interchanged with the Norfolk Southern ("NS") for delivery to their final destination. Similarly, two movements that originate at Apple Grove are transported by CSXT to Columbus, Ohio and interchanged with NS for delivery to Fremont, Ohio and Nicholasville, Kentucky. For all six of these movements, M&G could move PET via bulk hopper truck from Apple Grove or Belpre to a transload facility at the current NS interchange, where the product

could be loaded to hopper cars and delivered to NS for transportation to the ultimate destinations. *See* V.S. Heisler at 11-12.

PET transloading into railcars from self-loading vacuum pneumatic trucks is quite similar to transloading into such trucks from railcars. In each case, the truck itself carries the essential equipment for the transloading, and loading can be accomplished with minimal outside equipment, facilities, and labor. Mr. Heisler provides a fuller description of the truck-to-rail unloading process in his verified statement. *See id.* at 12. Mr. Heisler identified transload facilities at the current NS interchange points that have the capacity to handle PET transloading into railcars, and his analysis demonstrates that after considering trucking costs, transload facility costs, and all ancillary charges, the alternative transportation options he has described are cost-competitive with CSXT's rail service. *See id.* at 11-12.

**C. Competitive Truck-to-Short-Line Alternative for Twelve Apple Grove-Chicago Movements.**

Twelve of the Issue Movements involve traffic that originates at Apple Grove and is destined to western rail carrier connections over the Chicago gateway. Mr. Heisler's analysis demonstrates that the CSXT portion of each of these movements is subject to truck-rail competition: specifically, direct truck shipments to the Lima, Ohio transloading facility on the Chicago, Fort Wayne and Eastern ("CFER") railroad; transloading into empty hopper cars staged at Lima; and rail transportation on the CFER to Chicago. *See* V.S. Heisler at 12-13. Mr. Heisler has confirmed that the Lima transload facility is well suited for PET transloading, that it has sufficient capacity, and that the cost of the truck-to-CFER option is competitive with CSXT's tariff rate for movements to the Chicago gateway for interchange to western carriers. *See id.*

**D. Competitive Short-Line-to-Truck Alternative for Four Western Origin Movements Through Chicago.**

M&G has a similar competitive alternative for Issue Movements that CSXT receives at Chicago in interchange from western carriers. Just as M&G could competitively ship PET to the Chicago gateway by trucking to Lima and transloading to the CFER for rail delivery, several Issue Movements that CSXT currently receives in interchange over Chicago could be competitively shipped on the CFER to Lima and transloaded to trucks for delivery to their ultimate destinations. *See* V.S. Heisler at 13-14. These Issue Movements and their potential CFER-to-truck alternatives are discussed in Mr. Heisler’s verified statement, and he has confirmed that the total costs of these options are competitive with CSXT’s rail transportation rates. *See id.*

\* \* \*

Each of the options Mr. Heisler has identified is both logistically feasible and economically competitive. M&G’s own {{ }} use of trucks – and particularly vacuum pneumatic trucks self-loading from railcars at Apple Grove – illustrates the feasibility of these options. And after consideration of all costs, Mr. Heisler’s analysis demonstrates that each of the options is comparable to CSXT’s tariff rates – some lower, some slightly higher, but all close enough to influence and constrain CSXT’s rates. These options certainly constitute “feasible transportation alternatives that could be used for the issue traffic,” *E.I. du Pont de Nemours & Co. v. CSX Transportation, Inc.*, STB Docket No. 42100, and as such they constitute “effective competition from . . . other modes of transportation for the transportation to which a rate applies.” 49 U.S.C. § 10707(a). In the face of this substantial evidence that nearly { } of the Issue Traffic volume faces effective competition, the Board should consider the parties’ qualitative market dominance evidence now and eliminate the need for preparation and

consideration of complex SAC evidence that may prove to be irrelevant because of M&G's inability to prove jurisdiction.

**III. M&G HAS THE CAPACITY TO SIGNIFICANTLY INCREASE TRUCK LOADING AT APPLE GROVE.**

M&G has acknowledged – as it must – that it ships {{ PET via self-loading trucks today. M&G's theory of market dominance appears to be that the Apple Grove plant has "limited capacity" for bulk truck loading and is not capable of expanding bulk truck loadings to "switch its rail-served customers to trucks." M&G Reply to SCRF Motions to Bifurcate and for Protective Order, V.S. Meyer at ¶ 19 (filed Dec. 9, 2010). In fact, M&G has substantial capacity to load additional bulk trucks at Apple Grove, {{

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In the first place, as a matter of law and basic economics M&G does not need to be able to shift 100% of its rail volumes to alternative modes for those alternative modes to be effective competitive options that preclude a finding of market dominance. The Board has made clear that "[f]or an alternative mode to provide effective competition, it need not necessarily be 'capable of handling substantially all or even a majority of the subject traffic.'" *DuPont*, STB Docket No. 42100, at 4 (citing *Amstar Corp. v. Great Alabama S. R.R.*, I.C.C. Docket No. 38239S (served Nov. 10, 1987)). The Board instead "seek[s] to determine [ . . . ] whether the alternative mode places 'considerable competitive pressures' on the defendant railroad." *Id.* Indeed, effective competition can exist where an alternative transportation option accounts for half or less than half of the total volume. *See Consolidated Papers*, 7 I.C.C.2d at 337-38 (trucks provided effective intermodal competition where 55% of issue traffic moved via truck);

*Aluminum Ass'n*, 367 I.C.C. at 484 (finding effective intermodal competition where motor carriage accounted for one-third of nationwide aluminum movements).

Here, M&G has the ability to shift immediately a substantial segment of CSXT's rail volumes to truck. During 2010, M&G has loaded approximately {{ }} trucks per month at Apple Grove. *See* V.S. Heisler at 15. Using very conservative assumptions and without any additional capital investments, M&G could load as many as { } cars per day from its current transloading tracks (which have { } car spaces for transloading). *See id.* Conservatively assuming a Monday-Friday loading schedule, M&G therefore could load as many as { } trucks per month using its current facilities – an increase of {{ }} trucks per month over current volumes that would allow it to shift the volume equivalent of {{ }} railcars per month and {{ }} railcars per year to trucks. *See id.* M&G's ability to shift such a substantial number of railcar volumes to truck is precisely the sort of “considerable competitive pressure[.]” that constitutes effective market competition. *DuPont*, STB Docket No. 42100, at 4.

If M&G wished to use trucks to ship the entire annual volumes of each of the Issue Movements with competitive options identified in this Motion, it could do so with a modest capital investment of less than \$200,000. *See* V.S. Heisler at 16-17.<sup>6</sup> The Board has recognized that it is reasonable to expect shippers to engage in some “self-help” to pursue a competitive option. *See FMC Wyoming*, 4 S.T.B. at 712-14 (holding that shipper's ability to convert facilities to accommodate truck operations precluded finding of market dominance). Here, the minimal capital improvements that M&G would need to make to substantially enhance truck loading capacity exemplify what Vice Chairman Nottingham described as the “proverbial open court lay-up of self-help.” *See* Oral Argument Transcript at 24, *Seminole Elec. Co. v. CSX*

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<sup>6</sup> *Cf. Boykin*, 364 I.C.C. at 267 (“a \$300,000 investment over a four-year period [in 1980 dollars] is not a substantial investment indicative of a captive shipper”).

*Transp., Inc.*, STB Docket No. 42110 (June 30, 2010). Indeed, if M&G chose to implement these improvements to enhance its truck loading capabilities, the one-time costs of such improvements would be far outweighed by the annual savings M&G could realize by reducing its railcar fleet and potentially eliminating track lease costs.

If 100% of the annual volume of each of the lanes with competitive options were shifted to bulk trucks, M&G would need to load { } additional trucks per year.<sup>7</sup> *See* V.S. Heisler at 15. M&G has ample capacity to accommodate this increased volume at minimal expense. Mr. Heisler consulted with an experienced railroad facility engineering firm, ViaRail LLC, to develop costs for capital investments that M&G could make to increase its truck loading capacity. *See id.* at 16. These potential capital investments are presented by Mr. Heisler in four phases, and are illustrated in Exhibits 4 and 5. M&G does not need to adopt all these capital improvements in order to have sufficient capacity to convert 100% of the lanes identified in this motion to truck transportation. Construction of lighting for existing transload tracks as proposed in Phases 1 and 2 alone would provide sufficient capacity to address all the lanes in this Motion. Additional phases are presented to demonstrate the extent to which M&G could enhance its truck loading capacity with relatively modest one-time investments, thereby putting even greater pressure on CSXT's rates.

Phases 1 and 2 proposed by Mr. Heisler consist of construction of lighting at M&G's existing transload areas to permit 24-hour transloading operations. *See* V.S. Heisler at 16-17. The estimated total cost of lighting installation is \$195,250, and includes a substantial contingency allowance to account for potential cost overruns. *See id.* Construction of the

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<sup>7</sup> This projected truck volume is calculated by taking the 2009 CSXT rail volume for lanes listed in Exhibit 1 ( { }) and using the widely accepted conversion factor of four trucks per carload.

lighting fixtures as set forth in Phases 1 and 2 would allow M&G to load a total of { } trucks per day (even assuming three hours for each truck loading). *See id.* { } trucks a day translates to { } truck loadings a year based on a five-day work week, { }

*See id.*

Proposed Phases 3 and 4 would enhance M&G's ability to load trucks by constructing a second truck scale and a new transloading area, respectively. *See* V.S. Heisler at 17-18. While neither phase is necessary to accommodate truck volumes for the movements that could be competitively shifted to trucks, the availability of these additional capacity improvement options highlights the multiple options M&G has to increase its truck loading capacity.

Moreover, M&G would save a substantial amount of money by shifting to truck loadings. Among other things, it potentially could reduce the number of hopper cars it leases, many of which are under leases that expire in {{ }} *See* V.S. Heisler at 19. M&G pays an average of {{ }} per month to lease a railcar, which amounts to approximately {{ }} per car per year. *See id.* These railcar lease costs are a significant component of the total cost of M&G's use of rail service. If M&G were to use the alternative transportation options outlined by Mr. Heisler, it could substantially reduce its railcar fleet and save {{

}} of dollars per year on railcar lease costs.<sup>8</sup> *See id.* Mr. Heisler determined that railcar transit to and from destination for the Issue Movements with competitive options identified in this motion totaled approximately { } car-days in 2009 – approximately { } car-years. *See id.* As a result, M&G could save approximately {{ }} in lease costs

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<sup>8</sup> Because many of M&G's railcar leases expire in {{ }}, it could easily reduce its supply of railcars by not renewing those leases, and would not be forced to strand any railcars.

annually by increasing use of trucks and releasing unneeded hopper cars. *See id.* Additional savings could also be realized by closing M&G’s offsite transload facility at Belpre. *See id.* If M&G fully utilizes its truck loading capacity at Apple Grove, it likely would not need to maintain a separate transloading site at Belpre, where M&G pays {{ }} annually for a track lease. *See id.* In short, the substantial savings M&G would realize from increasing its use of trucks – in a single year – would easily offset the capital costs required to substantially expand transloading capacity by constructing sufficient lighting.

**IV. M&G’S OWN STUDIES DEMONSTRATE THE VIABILITY OF THE COMPETITIVE OPTIONS DESCRIBED IN THIS STATEMENT.**

Despite the availability of alternative competitive options for nearly { } of the Issue Traffic, M&G has chosen to pursue a rate case rather than use those options. {{

}} But M&G’s calculated decision to attempt to obtain lower rates through regulatory intervention than it could obtain in the competitive marketplace does not change the fact that those feasible and cost-competitive alternatives are “effective competition” within the meaning of § 10707(a).

{{

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<sup>9</sup> {{

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<sup>10</sup> {{

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<sup>11</sup> {{

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}}

Simply put, M&G cannot choose to become “captive” to CSXT’s rail service for purposes of establishing jurisdiction in this case through the device of refusing to take advantage of feasible and realistic alternatives to CSXT’s rail transportation service. Congress imposed a market dominance requirement to ensure that rate reasonableness remedies would only be available to shippers who have no meaningful choice but to use a particular railroad’s service. Where a shipper has access to effective competitive options – like M&G does – that shipper cannot manufacture artificial “market dominance” by refusing to exercise those options simply because the shipper wants to try its luck in a SAC case. Because of the serious questions about M&G’s ability to prove market dominance in this case, the Board should consider the parties’

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<sup>12</sup> {{

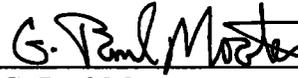
}}

qualitative market dominance evidence now. Otherwise, the parties will devote substantial resources to developing – and the Board will devote substantial resources to considering – SAC evidence that will likely become moot because of M&G’s inability to prove that CSXT has market dominance over the vast majority of the transportation at issue.

**V. CONCLUSION**

For the reasons set forth above and in the accompanying verified statements and exhibits, CSXT respectfully requests that the Board: (1) order M&G to submit any evidence that it contends demonstrates qualitative market dominance on an expedited basis; (2) should the Board deem it appropriate, hold an oral argument on qualitative market dominance; (3) consider and rule on this Motion and the parties’ qualitative market dominance jurisdictional evidence before M&G’s procedural deadline for opening SAC evidence, or if necessary, hold the procedural schedule in abeyance until the Board issues its determination on qualitative market dominance; and (4) hold that there is effective competition for the movements addressed in this Motion and therefore that under 49 U.S.C. § 10707(a) the Board lacks jurisdiction to determine the reasonableness of the challenged rates for those movements.

Respectfully submitted,



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Dated: January 27, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of January, 2011, I caused a copy of the foregoing Motion for Expedited Determination of Jurisdiction Over Challenged Rates to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

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Eva Mozena Brandon

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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

**VERIFIED STATEMENT OF GORDON R. HEISLER**

My name is Gordon R. Heisler, and I submit this Verified Statement in support of Defendant CSX Transportation, Inc.’s (“CSXT’s”) Motion for Expedited Determination of Jurisdiction Over Challenged Rates. Specifically, this Verified Statement details my analysis of transportation alternatives to the CSXT rail movements whose rates are challenged by Complainant M&G Polymers USA, LLC (“M&G”) in this proceeding. My analysis demonstrates that effective market competition exists for at least 32 of the transportation lanes in the Amended Complaint, constituting { } of the carloads moved over all of the Complaint lanes during 2009. Twelve of these movements could be cost-effectively transported from origin to destination by truck; and twenty-two could be transported in intermodal rail-truck service.<sup>1</sup> These options are feasible and cost-competitive with CSXT rail service. Indeed, {{

}}

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<sup>1</sup> Two movements are subject to more than one of these competitive options, making a total of thirty-two movements that have at least one competitive option.

I am a Principal of my own consulting firm, Heislog LLC, 98 McConkey Drive, Washington Crossing, PA 18977, which I founded in 2005. I have 38 years of experience in surface transportation and logistics, a large portion of which related to chemicals and plastics distribution for Sunoco, Inc. (“Sunoco”) and for FMC Industrial Chemicals. I directed Sunoco’s transportation group for approximately 13 years before retiring from that company in 2005. During my Sunoco tenure, I was responsible for the operational management and economics of all deliveries including rail and bulk trucking movements of Sunoco Polymers. This entailed over 3,000 plastics hopper cars delivering over 12,000 rail shipments of polymer products annually, as well as establishment and operation of 18 plastics intermodal transload facilities. Sunoco held contracts with seven Class I rail carriers and with 12 bulk motor carriers of plastics to accomplish this transportation. I have made presentations regarding logistics business issues to this Board, to members of the Senate and House of Representatives, and before a number of industry groups, including the National Industrial Transportation League, the Council of Logistics Management, and the American Coalition for Ethanol. I am also a former Director of the American Plastics Council-Transportation and Logistics Committee.

## **I. OVERVIEW OF METHODOLOGY**

M&G has challenged the reasonableness of CSXT’s rates for transporting polyethylene terephthalate (“PET”) between 68 origin-destination pairs (“Issue Movements”). Most of the Issue Movements originate either at M&G’s United States production facility in Apple Grove, West Virginia or at Belpre, Ohio, where M&G maintains some rail cars on storage tracks at a Bulkmatic facility. Several issue movements also originate at M&G’s Mexico facility or at a Texas storage-in-transit facility; CSXT receives these shipments at Chicago, New Orleans, or East St. Louis, Missouri.

While M&G has asserted that CSXT has market dominance over all the Issue Movements, in response to CSXT's discovery requests M&G has admitted {{  
}} At least {{ }} bulk trucks were loaded at Apple Grove between 2007 and 2010, and as demonstrated below M&G could substantially increase the number of truck loadings at minimal cost. {{

}} My analysis demonstrates that M&G could use these options in lieu of CSXT rail service for many of the Issue Movements, and that M&G's ability to shift transportation to truck is an effective competitive constraint on CSXT's rail rates.

To develop my analysis of M&G's competitive options, I examined the transportation and logistics characteristics of each of the Issue Movements and reviewed viable and economically realistic competitive alternatives to CSXT's all-rail service for a significant number of them. Specifically, twelve of the lanes are subject to competition from motor carriers that could provide truck transportation service for the entire route of the movement, and the traffic in twenty-two lanes can be transported in intermodal rail-truck service. The traffic in these lanes represents { } of the total volume of Issue Movement traffic transported by CSXT in 2009. All the options I have identified are both feasible and cost-effective. The truck loadings that I have proposed would be accomplished with self-unloading trucks with vacuum pneumatic equipment that allows the truck to load from and unload into railcars without any

additional equipment or facilities. M&G already uses these self-unloading trucks for {{ }} of annual truck shipments, and it would require little capital investment for M&G to substantially increase its capacity for truck shipments. {{ }}  
}}

In all cases, I determined the costs of alternatives to CSXT's transportation service by using actual, real-world transportation rates that are currently available to M&G. I determined trucking costs by using {{

}}.<sup>2</sup> These costs all include costs for vacuum pneumatic loading and unloading, any applicable fuel surcharge, and trailer cleaning charges. Where M&G could feasibly have product trucked to a transloading facility and delivered via rail, I calculated all applicable transloading and accessorial charges for use of the transloading facility, and used {{ }} to calculate the cost of the alternative rail portion. In order to enable an apples-to-apples comparison between costs for rail transportation and truck transportation, I used a commonly accepted conversion ratio of four trucks to transport the contents of each railcar. The costs of alternate transportation set forth in Exhibit 1 are on a per-railcar basis using a 4:1 truck-to-railcar ratio. {

}

In several cases, the competitive options I identify here would mean that M&G customers who primarily have received PET by rail car would instead receive products by truck.

{{

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<sup>2</sup> {{

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}}

In all, I have identified competitive options for lanes that handled { } carloads of CSXT rail traffic in 2009. While transferring this entire volume to truck would represent a significant number of truck loadings – { } assuming four trucks for each railcar – this expansion is well within M&G’s truck loading capabilities. Section IV of this verified statement discusses M&G’s current truck loading capabilities and the modest capital investments that would result in a significant expansion of the loading capacity of the Apple Grove plant.

**II. M&G REGULARLY LOADS PET INTO TRUCKS AT APPLE GROVE AND COULD READILY CONVERT MANY RAILCAR SHIPMENTS TO TRUCKS.**

In my experience, truck transportation is a very viable option for distribution of plastics. While trucks can be used to transport a variety of commodities, truck transportation is particularly feasible for PET in plastic pellet form. My experience that PET shipments are amenable to truck movements is confirmed by {{

}}

Below is a brief description of the bulk truck loading process at Apple Grove.<sup>3</sup>

All PET produced at Apple Grove is loaded into rail hopper cars.<sup>4</sup> While many of these loaded hopper cars are currently shipped via rail to customers or offsite storage tracks, many of them are moved to onsite Apple Grove transloading tracks for loading into bulk trucks. Cars that are to be transloaded into trucks {

}

Each of these transload tracks is adjacent to a roadway from which vacuum pneumatic self-loading trucks can access the railcars.

{{

}} When M&G wants to ship product to a customer by truck, it contacts a trucking provider to schedule an outbound load. Upon arrival at the plant, truckers check in, use the plant's truck scale to "scale empty" before loading, and are directed to the transload tracks where they locate the designated car from which to unload. *See Ex. 3 at 2-4.* Drivers bring all equipment necessary for the transload (including a transfer hose) and are familiar with plant safety, security and individual hopper car and truck seal record procedures. *See id.* at 5-6. After hooking up the unloading hoses to both car and truck, the truck's vacuum pneumatic apparatus transfers PET from the railcar into the truck. *See id.* at 7-8. After the hoses are connected, loading one bulk truck generally takes about an hour. *See id.* at 9-10. Following the transfer, all hoses are disconnected and the driver applies hopper truck seals to all possible product exit

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<sup>3</sup> This description is based on my experience in logistics, my review of M&G discovery materials, and my direct observation of truck loading at the Apple Grove plant on December 16, 2010. Photographs from that visit that illustrate the steps in the bulk loading process are attached as Exhibit 3.

<sup>4</sup> M&G has claimed that it does not have the ability to directly load trucks from production, and CSXT is not challenging that assertion for purposes of this Motion.

locations. *See id.* at 11-13. The driver then returns to the Apple Grove truck scale for outbound weighing and is issued the bill of lading before departure. *See id.* at 14.

This simple, routine process occurs {{ }} at M&G and is an effective and feasible alternative to rail service. M&G has stated that it loads an average of {{ }} bulk trucks per week at Apple Grove and as many as {{ }} trucks in a single week. *See M&G Reply to SCRF Motion to Bifurcate, V.S. Meyer at ¶ 19 (filed Dec. 9, 2010).* While M&G asserts that it does not have the capacity to load more trucks, *see id.*, in fact M&G has the capacity to load far more trucks than it is loading today using its current infrastructure. With modest capital expenditures M&G could load even more trucks. *See infra* Section IV.

M&G has suggested that the Apple Grove plant's location somehow limits truck access. *See M&G Reply to SCRF Motion to Bifurcate, V.S. Meyer at ¶ 21-22 (filed Dec. 9, 2010).* This is not accurate. M&G's Apple Grove facility is located directly on a major state highway – West Virginia Route 2. Route 2 is the primary artery connecting Point Pleasant, West Virginia and Huntington, West Virginia (two bridge crossings over the Ohio River), and trucks from the Huntington/Kenova refining and industrial areas regularly use the highway. I have directly observed Route 2 in the vicinity of the plant, and in my opinion it can easily accommodate significant truck traffic. The highway is level grade with mountains along the eastern side and well elevated above the Ohio River. While Route 2 is two lanes near the plant, it has been improved with full width shoulders in many sections. Mr. Meyer's claim that "[i]n the past fifteen years, direct truck service has been significantly impacted by three weather events" only illustrates the high reliability of truck service. *See M&G Reply to SCRF Motion to Bifurcate, V.S. Meyer at ¶ 22 (filed Dec. 9, 2010).* If truck service has only been "significantly impacted" by weather once every five years, it is fair to say that weather rarely affects truck

access to Apple Grove. Indeed, I observed a number of large dry and liquid bulk trucks navigate Route 2 easily in heavy snow on December 16, 2010.

### III. COMPETITIVE ALTERNATIVES TO CSXT'S RAIL SERVICE

The competitive alternatives to CSXT's rail service that I have identified for the Issue Movements fall into four categories.

- First, a number of movements could be transported by trucks from the origin at Apple Grove or Belpre to the final destination.
- Second, for several routes where CSXT currently transports PET from Apple Grove or Belpre to an interchange point with another carrier, M&G instead could transport product via truck to a transload site at the current interchange point. At the transload site PET could be loaded into hopper cars and tendered to the connecting railroad for delivery to final destination.
- Third, twelve of the Issue Movements are movements in which CSXT currently transports PET from Apple Grove to Chicago for interchange to another carrier for delivery to a western destination. For each of these movements, M&G instead could truck PET to a Lima, Ohio transload site located on the Chicago, Fort Wayne, and Eastern Railroad ("CFER"). At Lima the product could be transloaded into empty hopper cars and transported by the CFER to Chicago for interchange to the connecting carriers.
- Fourth, several movements that CSXT receives at Chicago instead could be received at Chicago by CFER for delivery to the Lima transload facility. From there the product could be transloaded into trucks and delivered to its final destinations.

Each of these competitive options are described further below and in the exhibits to this Verified Statement. Exhibit 1 is a table that shows the key characteristics and costs of the competitive options I have identified. Exhibit 2 consists of maps of each competitive alternative detailed in Exhibit 1. Below I discuss in more detail each of these alternatives and the Issue Movements that are subject to competition from that alternative.

#### A. All-Truck Competitive Alternatives for Twelve Issue Movements.

My analysis identifies twelve movements for which a direct truck movement from the challenged origin at Apple Grove or Belpre to the final destination is a viable competitive

alternative to the CSXT tariff rate (or, for movements that currently move in interline service, to the combination of the CSXT tariff rate and contract rate for the other rail carrier). See Exhibit

1. These movements are briefly described below.

- **Movement 1A (Apple Grove to Belpre)<sup>5</sup>:** The CSXT rate from Apple Grove to Belpre is \$2623. Four bulk truckloads can be delivered to this destination by A&R Transport for a total cost of {{ }}, which is within {{ }} of the direct rail cost.
- **Movement 4A (Apple Grove to Clifton Forge, VA):** The CSXT tariff for this movement is \$3969. M&G instead could ship four bulk truckloads direct from Apple Grove via R&J Trucking for a total cost of {{ }} - {{ }}.
- **Movement 5A (Apple Grove to Devon, KY):** CSXT transports cars ultimately bound for Devon to Cincinnati, Ohio, where they are interchanged with Norfolk Southern for a local delivery to Devon, KY. CSXT charges \$2849 for this movement. Four trucks can provide delivery from Apple Grove to Devon directly by Bulkmatic Transport for a total cost of {{ }}, only {{ }} above the challenged rate.
- **Movement 8A (Apple Grove to Parkersburg, WV):** The CSXT tariff rate to Parkersburg, WV is \$2612. Four bulk truckloads can provide delivery to this destination by A&R Transport for a total cost of {{ }}, which is {{ }} to the direct rail cost.
- **Movement 10A (Apple Grove to Rochester, NY):** CSXT's tariff rate is \$8744 for direct rail transportation to Rochester. Four hopper trucks can provide delivery from Apple Grove by A&R Transport for a total cost of {{ }}.
- **Movement 14A (Belpre to Devon, KY):** CSXT's tariff rate for this movement to the Cincinnati, OH interchange with NS is \$3920. Bulkmatic Transport would provide delivery via four hopper trucks to Devon, KY from Belpre for a charge of {{ }}.
- **Movement 8B (Apple Grove to Allentown, PA):** The CSXT tariff rate to transport cars from Apple Grove to Hagerstown, MD is \$5418. At Hagerstown the cars are interchanged to NS, which charges {{ }} for the leg from interchange to destination in Allentown. {{ }} The total rail cost for delivery to this customer is therefore {{ }}. Kenan Transport would deliver 4 trucks from Apple Grove to Allentown for a competitive cost of {{ }}.
- **Movement 14B (Apple Grove to Franklin, IN):** The total rail cost of {{ }} consists of \$3763 for the CSXT tariff from Apple Grove to Louisville, KY and the LIRC {{ }} rate of {{ }} from Louisville to Franklin. {{ }}

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<sup>5</sup> I have identified Issue Movements by referring to the lane number in the exhibits to M&G's First Amended Complaint. For example, Movement "1A" corresponds to the lane numbered "1" in Complaint Exhibit A, and Movement "8B" corresponds to the lane numbered "8" in Complaint Exhibit B.

}} Direct motor carrier service from Apple Grove to Franklin via Bulkmatic Transport produces a total delivered charge of {{ }} for delivery of four hopper truck loads. This is highly competitive with the combined CSXT/LIRC rail delivery cost.

- **Movement 18B (Apple Grove to Havre de Grace, MD):** Like Movement 8B, this movement is a CSXT/NS joint movement over the Hagerstown, Maryland interchange. The total of the CSXT tariff and the NS {{ }} rate is {{ }} to destination. Alternatively, Kenan Transport could deliver four trucks to Havre de Grace for {{ }}.
- **Movement 20B (Apple Grove to Hebron, OH):** CSXT transports cars bound for Hebron to Columbus, Ohio, where the cars are interchanged to the Columbus & Ohio River Railroad (“CUOH”) for delivery to the customer in Hebron. CUOH charges a {{ }} rate of {{ }}, which combined with the CSXT tariff of \$2993 results in total rail delivery charges of {{ }}. Direct shipments from Apple Grove to Hebron can be delivered by Kenan Transport for a cost of {{ }} for the four bulk trucks, a cost that is within {{ }} of the current rail transportation cost.
- **Movement 35B (Apple Grove to Waynesville, NC):** Rail shipments from Apple Grove to Waynesville are transported in joint CSXT/NS service in which CSXT interchanges Apple Grove-originating railcars with NS at Lynchburg, Virginia. CSXT’s tariff from Apple Grove to Lynchburg is \$3993, and {{ }} a rate of {{ }} from Lynchburg to Waynesville. {{ }} The total rail charges from origin to destination therefore are {{ }} A competitive trucking alternative from Apple Grove to Waynesville from R&J Trucking exists at an {{ }} cost of {{ }} for four truck shipments.
- **Movement 39B (Belpre to Franklin, IN):** CSXT’s tariff rate for movements from Belpre to Louisville is \$5225; as discussed above for Movement 14B M&G’s {{ }} rate with the LIRC for shipments from Louisville to Franklin is {{ }} per carload. The total rail transportation costs of {{ }} is higher than the {{ }} cost of shipping four truckloads of PET from Belpre direct to Franklin via Kenan Transport.

These alternatives are both logistically feasible and economically competitive with CSXT rail service. For each of these movements, the distance for a bulk truck shipment is considerably shorter than the distances M&G has previously trucked PET to customers. Given M&G’s {{ }} utilization of bulk trucks today, its use of bulk trucks for these movements is plainly a feasible alternative. Moreover, Exhibit 1 demonstrates that bulk truck shipments are a cost-competitive alternative to CSXT’s rail service. {{ }}

}} In my opinion, the similarity between CSXT's tariff rates and the cost of trucking alternatives demonstrates that truck competition is acting as a competitive constraint on CSXT's rail rates for these movements.

**B. Truck-To-Transload-Facility Competitive Alternatives for Six Issue Movements**

Four of the Issue Movements – 8B (Apple Grove to Allentown, PA); 18B (Apple Grove to Havre de Grace, MD); 19B (Apple Grove to Hazleton, PA); and 37B (Belpre to Allentown, PA) – originate at Apple Grove or Belpre and are transported by CSXT to Hagerstown, Maryland and interchanged with the Norfolk Southern (“NS”) for delivery to their final destination. Similarly, two movements that originate at Apple Grove are transported by CSXT to Columbus, Ohio and interchanged with NS for delivery to Fremont, Ohio and Nicholasville, Kentucky: Movement 15B (Apple Grove to Fremont, OH) and Movement 24B (Apple Grove to Nicholasville, KY). M&G has a competitive alternative to CSXT's rail service on all six of these lanes; specifically, M&G could move PET via bulk hopper truck from Apple Grove, WV to a transload facility at the current NS interchange, where the product could be loaded into hopper cars and delivered to NS for transportation to the ultimate destinations.

Under this scenario, trucks would be loaded at Apple Grove or Belpre as described above in Section II. For the four Hagerstown lanes, PET would be moved via truck over the 329-mile highway route to the Utility Supply transload facility at Hagerstown, which is located near NS's Vardo Yard.<sup>6</sup> The Utility Supply facility currently transloads other industrial products from rail to truck, is fenced and gated, and has the capacity to make eight to ten car spots available for plastics transloading. At the Utility Supply facility, PET would be loaded into

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<sup>6</sup> Detailed descriptions of the Utility Supply facility and the other transload facilities discussed in my Verified Statement are included in my workpapers. See Workpaper “CSX MG Transload site Options Detail.xls”.

rail cars using the self-unloading vacuum pneumatic capabilities of the bulk trucks,<sup>7</sup> and the rail cars would be tendered to NS for delivery to final destinations under the terms of the existing NS-M&G contract.<sup>8</sup> {{

}}

Similarly, for the two Columbus lanes PET could be shipped in trucks to the NS Thoroughbred Bulk Transfer Terminal (“TBT”) at Columbus, Ohio. The Columbus TBT is fenced, gated and has the capacity to make five to six car spots available for plastics transloading. Like at Hagerstown, bulk trucks could transload PET into railcars at the Columbus TBT, and those railcars could then be tendered to NS for delivery to their ultimate destination.

{{ }}

**C. Competitive Truck-to-Short-Line Alternative to Apple Grove-Chicago Movements.**

Twelve of the Issue Movements involve traffic that originates at Apple Grove and is destined to western rail carrier connections over the Chicago gateway.<sup>9</sup> The CSXT portion of

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<sup>7</sup> The process of loading PET from trucks to hopper cars is similar to the truck loading process described herein. A transfer hose is attached to the top of the hopper car, typically with a plastics “T” fitting to ensure even distribution of product within the rail car. Then the transfer hose is attached to the truck and the truck’s vacuum pneumatic system blows PET into the railcar.

<sup>8</sup> {{

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<sup>9</sup> Specifically, Movements 7B (Apple Grove to Aguila, AZ); 9B (Apple Grove to Altamira, MX); 10B (Apple Grove to Champaign, IL); 16B (Apple Grove to Glendale, AZ); 21B (Apple Grove to Lenexa, KS); 22B (Apple Grove to Little Rock, AR); 25B (Apple Grove to Rockford, IL); 26B (Apple Grove to Rogers, MN); 30B (Apple Grove to Sweetwater, TX); 32B (Apple Grove to University, IL); 33B (Apple Grove to Vado, NM); and 34B (Apple Grove to West Chicago, IL).



each have the same competitive alternative for the CSXT leg from Chicago to Apple Grove. Instead of being interchanged to CSXT at Chicago, these movements could be interchanged to the CFER and delivered by CFER to the Lima transload facility discussed above. From Lima, Bulkmatic trucks could self load from the cars and move product to Apple Grove, where it could be delivered into silos or into parked hopper cars. The {{ }} cost of this option is competitive with CSXT's \$5717 tariff rate.

- **Movement 2B (Altimira, MX to Belpre):** As in the option described above, CFER could receive these cars at Chicago rather than CSXT. CFER could transport the cars to Lima for loading into bulk trucks and transportation via truck to Belpre where it could be delivered into silos or into parked hopper cars. The total costs of the CFER/truck option are {{ }} and are highly competitive with CSXT's tariff rate of \$5741.
- **Movement 3B (Altimira, MX to Cambridge, OH):** Similarly, CFER could receive these cars over the Chicago gateway and transport them to Lima for transloading into bulk trucks for delivery to Cambridge. The {{ }} total cost of this option is competitive with CSXT's rail transportation tariff of \$5901.

\* \* \*

Each of the options above is both logistically feasible and economically competitive. M&G's own {{ }} use of trucks – and particularly vacuum pneumatic trucks that self-load from railcars at Apple Grove – illustrates the feasibility of the options I have proposed. And the costs of each option are either lower than or comparable to CSXT's tariff rates. In my expert opinion M&G has the option of using the above alternative transportation options, and the existence of these real options acts as a competitive constraint on CSXT's tariff rates.

**IV. M&G HAS THE CAPACITY TO ENHANCE TRUCK LOADING SIGNIFICANTLY.**

In my opinion M&G does not need to convert the entire volume of PET rail shipments over a particular route to trucks in order to influence and constrain market rail rates for that route significantly. But even if one assumes that the entire volume of each of the alternatives outlined above were shifted from rail transportation to truck transportation, M&G has the ability to accommodate this increased truck volume with minimal expense.

During the first eleven months of 2010 M&G loaded {{ }} bulk trucks at Apple Grove – approximately {{ }} trucks per month, which annualizes at {{ }} trucks per year. If 100% of the annual volume of each of the lanes with competitive options were shifted to bulk trucks, M&G would need to load { } additional trucks per year.<sup>10</sup> While this represents an increase of almost {{ }} in truck loading volume annually, M&G has ample capacity to accommodate this increased volume with a one-time capital investment of less than \$200,000 – an investment that would easily be offset by the substantial savings M&G would realize from reducing its railcar fleet and potentially eliminating track lease costs.

As described above, at the Apple Grove plant railcars containing PET are transloaded into trucks by switching them onto {

} Using very conservative assumptions, without any capital improvements M&G can load as many as { } trucks per day from these car spots. I have assumed that only 50% of the car spots can be used for loading at any one time due to the need to space trucks, truck scheduling issues, and the need to switch out empty railcars. I have further accepted M&G's assertion that it takes an average of {{ }} to load a truck,<sup>11</sup> and assumed an average of three hours per truck loading. I believe that this is a significant

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<sup>10</sup> This projected truck volume is calculated by taking the 2009 CSXT rail volume for lanes listed in Exhibit 1 ({{ }}) and assuming four trucks per carload.

<sup>11</sup> M&G made this assertion in its Response to CSXT Interrogatory No. 44. *See* M&G Responses to Second Set of CSXT Interrogatories, Ex. 3 at 1 (attached as Ex. 9).

overestimate; the industry norm is approximately two hours for bulk truck loading.<sup>12</sup> I have also assumed that loading can occur for an average of twelve hours a day. {

} Assuming loading five days per week, { } trucks per day translates into a current loading capacity of { } trucks per year before any capital improvements.

M&G could considerably increase this capacity at minimal expense. I consulted with an experienced railroad facility engineering firm, ViaRail LLC, to develop costs for capital investments that M&G could make to increase its truck loading capacity. These potential capital investments are presented in several phases and illustrated in Exhibits 4 and 5. Importantly, M&G does not need to adopt all these capital improvements in order to have sufficient capacity to convert 100% of the lanes identified in this motion to truck transportation. As demonstrated below, construction of lighting for existing transload tracks as proposed in Phases 1 and 2 alone would provide sufficient capacity to address all the lanes in this Motion. Additional phases are presented to demonstrate the extent to which M&G could enhance its truck loading capacity with relatively modest one-time investments, thereby putting even greater pressure on CSXT's rates.

**Phase 1: Lighting at Track { } Loading Area:** Installing lighting in the existing Track { } transload area would allow for 24 hour transloading operations. For only \$82,500, M&G could install 10 light poles at this location.

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<sup>12</sup> {{

}}

See Ex. 5. This very conservative estimate includes lights, design and construction planning services, and a 35% contingency factor to allow for wiring installation and any unforeseen additional costs. This investment would allow M&G to extend loading hours from 12 hours per day to 24 hours per day and to double truck loadings at the { } transload tracks. See Workpaper “CSX M&G Transload Capacity Expansion Economics.xls”.

**Phase 2: Lighting at Track { } Loading Area:** Similarly, installation of additional lighting at the existing { } transloading tracks would enable 24-hour loading. The cost of installing and designing light poles (including the same 35% contingency factor described for Phase 1) would be \$112,750. See Ex. 5. This modest investment would allow 24-hour-per-day loading at these tracks and would significantly increase the number of trucks that could be loaded from this area. Indeed, construction of the lighting fixtures as set forth in Phases 1 and 2 would allow M&G to load a total of { } trucks per day (even assuming three hours for each truck loading). { } trucks a day translates to { } truck loadings a year based on a five-day work week, { } See Workpaper “CSX M&G Transload Capacity Expansion Economics.xls”. This would be an extremely efficient and cost-effective capital investment for M&G.

**Phase 3: New Truck Scale:** M&G currently uses only one truck scale for all inbound and outbound trucks. If M&G were to increase significantly its bulk truck loadings, construction of a second truck scale would help to process arriving and departing bulk trucks more efficiently. Large scale bulk truck shipping facilities typically have one scale for inbound trucks and a second scale for departing loaded trucks, because a second scale reduces truck delay and processing times associated with the check in and check out process. Phase 3 of my

proposed capital expenditure plan provides for installation of a second truck scale in the vicinity of the existing scale at an estimated cost of \$128,000. *See* Ex. 5. I note that this estimated cost (which again includes a substantial contingency allowance to account for potential cost overruns) is particularly conservative. {{

}}

**Phase 4: New Transload Area:** The additional capacity that would be generated by implementation of Phases 1-3 is more than sufficient to permit M&G to load significantly more trucks than would be necessary to handle all of the volume for all the Issue Movements with competitive options. If M&G wished to expand its truck loading capacity even further, the Apple Grove plant has sufficient space for M&G to construct an entirely new 20-car-spot set of two transloading tracks { } Exhibit 5 includes costs to illuminate the new area for 24-hour operation and for a stone road adjacent to both tracks with a road crossing. The proposed new track would be close to the plant gate and scale areas to minimize truck traffic within the plant. The addition of 20 additional transloading positions would provide loading capacity for an additional 80 trucks per day or almost 21,000 truckloads per year. *See* Workpaper “CSX M&G Transload Capacity Expansion Economics.xls”. While Phase 4 would cost an estimated \$1,172,760 and would be the most expensive option to increase transload capacity, this option would generate a significant capacity increase. Again, I offer this additional evidence simply to highlight the choices that M&G has, and not because that much additional capacity would be needed to handle all of the volumes that I have identified as readily divertible from railcar to trucks.

In short, M&G has multiple options to increase its truck loading capacity to accommodate a 100% volume shift to trucks. While a 100% volume shift will require the plant to make some investment in infrastructure, simply installing lights at the current transload tracks to permit round-the-clock operations will easily expand truck loading capacity to accommodate an additional 10,000 trucks per year.

Moreover, M&G would save a substantial amount of money by shifting to truck loadings. Among other things, it potentially could release a significant number of hopper cars, many of which are under leases expiring in {{ }} M&G pays an average of {{ }} per month to lease a railcar, which amounts to approximately {{ }} per car per year. *See* Workpaper “MG Truck RR Fleet Data Summary.xls”. These railcar lease costs are a significant component of the total cost of M&G’s use of rail service. If M&G were to use the alternative transportation options I have outlined, it could substantially reduce its railcar fleet and save {{ }} of dollars per year on railcar lease costs.<sup>13</sup> *See id.* After considering the average car transit times and historical volumes for the Issue Movements with competitive options, I have determined that railcar transit to and from destination for these movements totaled approximately { } car-days in 2009 – approximately { } car-years. *See* Workpaper “Potential Fleet Savings.pdf”. As a result, M&G could save approximately {{ }} in lease costs annually by increasing use of trucks and releasing unneeded hopper cars.

Some additional savings could also be realized by closing M&G’s offsite transload facility at Belpre. If M&G fully utilizes its truck loading capacity at Apple Grove, it is not clear why it needs to maintain a separate loading site at Belpre. Indeed, only {{ }} hopper

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<sup>13</sup> Because many of M&G’s railcar leases expire in {{ }}, it could easily reduce its supply of railcars by not renewing those leases, and would not be forced to strand any railcars.

truck shipments were made from Belpre during the first eleven months of 2010. M&G is currently paying {{ }} per year in lease costs for Belpre -- as well as the freight cost of moving cars there, currently \$2623 per car. In short, the substantial savings M&G would realize from increasing its use of trucks would easily offset the capital costs required to substantially expand transloading capacity by constructing sufficient lighting.

**V. M&G'S OWN STUDIES DEMONSTRATE THE VIABILITY OF THE COMPETITIVE OPTIONS DESCRIBED IN THIS STATEMENT.**

{{

}}

**VERIFICATION**

I, Gordon R. Heisler, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 20<sup>th</sup> day of January, 2011.

  
\_\_\_\_\_  
Gordon R. Heisler

**COMPETITIVE ALTERNATIVES TO CSX RAIL SERVICE:  
DIRECT TRUCK ALTERNATIVES**

Lane	Origin City	O St	Destination City	D St	Route	CSXT Tariff Rate Incl. FSC	Other Rail Cost	Total Rail Cost	Trucking Provider	Total Cost of Truck Alternative (Carload Equivalent)
1A	Apple Grove	WV	Belpre	OH	CSXT Direct	\$2,623		\$2,623	A&R Transport	{{ }}
4A	Apple Grove	WV	Clifton Forge	VA	CSXT Direct	\$3,969		\$3,969	R&J Trucking	{{ }}
5A	Apple Grove	WV	Devon	KY	CSXT (CINTI-NS switch)	\$2,849		\$2,849	Bulkmatic	{{ }}
8A	Apple Grove	WV	Parkersburg	WV	CSXT Direct	\$2,612		\$2,612	A&R Transport	{{ }}
10A	Apple Grove	WV	Rochester	NY	CSXT Direct	\$8,744		\$8,744	A&R Transport	{{ }}
14A	Belpre	OH	Devon	KY	CSXT (CINTI-NS switch)	\$3,920		\$3,920	Bulkmatic	{{ }}
8B*	Apple Grove	WV	Allentown	PA	CSXT-HAGTN-NS	\$5,418	{{ }}	{{ }}	Kenan Transport	{{ }}
14B	Apple Grove	WV	Franklin	IN	CSXT-LOUVL-LIRC	\$3,763	{{ }}	{{ }}	Bulkmatic	{{ }}
18B*	Apple Grove	WV	Havre de Grace	MD	CSXT-HAGTN-NS	\$5,418	{{ }}	{{ }}	Kenan Transport	{{ }}
20B	Apple Grove	WV	Hebron	OH	CSXT-CLMBO-CUOH	\$2,993	{{ }}	{{ }}	Kenan Transport	{{ }}
35B	Apple Grove	WV	Waynesville	NC	CSXT-LYNCH-NS	\$3,993	{{ }}	{{ }}	R&J Trucking	{{ }}
39B	Belpre	OH	Franklin	IN	CSXT-LOUVL-LIRC	\$5,225	{{ }}	{{ }}	Kenan Transport	{{ }}

\* Movement subject to another competitive alternative

**COMPETITIVE ALTERNATIVES TO CSX RAIL SERVICE:  
TRUCK-TO-TRANSLOAD FACILITY AT CURRENT INTERCHANGE POINT**

Lane	Origin City	O St	Destination City	D St	Route	CSXT Tariff Rate With FSC	Trucking Provider	Truck Cost (Carload Equivalent)	Transload Facility	Facility Fee	Total Cost of Alternative (Carload Equivalent)
8B*	Apple Grove	WV	Allentown	PA	CSXT-HAGTN-NS	\$5,418	Bulkmatic	{{ }}	Utility Supply, Hagerstown, MD	{{ }}	{{ }}
15B	Apple Grove	WV	Fremont	OH	CSXT-CLMBO-NS	\$2,993	Bulkmatic	{{ }}	NS Thoroughbred Bulk Terminal, Columbus, OH	{{ }}	{{ }}
18B*	Apple Grove	WV	Havrc de Grace	MD	CSXT-HAGTN-NS	\$5,418	Bulkmatic	{{ }}	Utility Supply, Hagerstown, MD	{{ }}	{{ }}
19B	Apple Grove	WV	Hazleton	PA	CSXT-HAGTN-NS	\$5,418	Bulkmatic	{{ }}	Utility Supply, Hagerstown, MD	{{ }}	{{ }}
24B	Apple Grove	WV	Nicholasville	KY	CSXT-CLMBO-NS	\$2,993	Bulkmatic	{{ }}	NS Thoroughbred Bulk Terminal, Columbus, OH	{{ }}	{{ }}
37B	Bclprc	OH	Allentown	PA	CSXT-HAGTN-NS	\$4,753	Bulkmatic	{{ }}	Utility Supply, Hagerstown, MD	{{ }}	{{ }}

\* Movement subject to another competitive alternative

**COMPETITIVE ALTERNATIVES TO CSX RAIL SERVICE:  
TRUCK TO LIMA TRANSLOAD FACILITY FOR RAIL TRANSPORTATION TO CHICAGO**

Lane	Origin City	O St	Destination City	D St	Route	CSXT Tariff Rate With FSC	Trucking Provider	Truck Cost (Carload Equivalent)	Transload Facility	CFER Rate from Lima to Chicago	Total Cost of Alternative (Carload Equivalent)
7B	Apple Grove	WV	Aguila	AZ	CSXT-CHGO-BNSF	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}
9B	Apple Grove	WV	Altamira	TM	CSXT-CHGO-BNSF-EAGPA-FXE	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}
10B	Apple Grove	WV	Champaign	IL	CSXT-CHGO-CN	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}
16B	Apple Grove	WV	Glendale	AZ	CSXT-CHGO-BNSF	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}
21B	Apple Grove	WV	Lenexa	KS	CSXT-CHGO-BNSF	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}
22B	Apple Grove	WV	Little Rock	AR	CSXT-CHGO-BNSF (UP switch)	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}
25B	Apple Grove	WV	Rockford	IL	CSXT-CHGO-CPRS	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}
26B	Apple Grove	WV	Rogers	MN	CSXT-CHGO-BNSF	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}
30B	Apple Grove	WV	Sweetwater	TX	CSXT-CHGO-BNSF	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}
32B	Apple Grove	WV	University Park	IL	CSXT-CHGO-CN	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}
33B	Apple Grove	WV	Vado	NM	CSXT-CHGO-BNSF	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}
34B	Apple Grove	WV	West Chicago	IL	CSXT-CHGO-UP	\$5,664	Bulkmatic	{{ }}	CFER, Lima OH	{{ }}	{{ }}

**COMPETITIVE ALTERNATIVES TO CSX RAIL SERVICE:  
LIMA TRANSLOAD FACILITY TO TRUCK FOR CHICAGO-ORIGINATING MOVEMENTS**

Lane	Origin City	O St	Destination City	D St	Route	CSXT Tariff Rate With FSC	CFER Rate from Chicago to Lima	Trucking Provider	Transload Facility	Truck Cost (Carload Equivalent)	Total Cost of Alternative (Carload Equivalent)
1B	Altamira	TM	Apple Grove	WV	FXE-EAGPA-BNSF-CHGO-CSXT	\$5,717	{{ }}	Bulkmatic	CFER, Lima OH	{{ }}	{{ }}
2B	Altamira	TM	Belprc	OH	FXE-EAGPA-BNSF-CHGO-CSXT	\$5,741	{{ }}	Bulkmatic	CFER, Lima OH	{{ }}	{{ }}
3B	Altamira	TM	Cambridge	OH	FXE-EAGPA-BNSF-CHGO-CSXT-CLMBO-CUOH	\$5,901	{{ }}	Bulkmatic	CFER, Lima OH	{{ }}	{{ }}
48B	Sweetwater	TX	Apple Grove	WV	BNSF-CHGO-CSXT	\$5,717	{{ }}	Bulkmatic	CFER, Lima OH	{{ }}	{{ }}

# Exhibit 2: Maps of Competitive Alternatives

**PUBLIC VERSION**

# Maps Illustrating Alternatives Where Shipments Could Be Moved By Truck Directly to Destination

**PUBLIC VERSION**

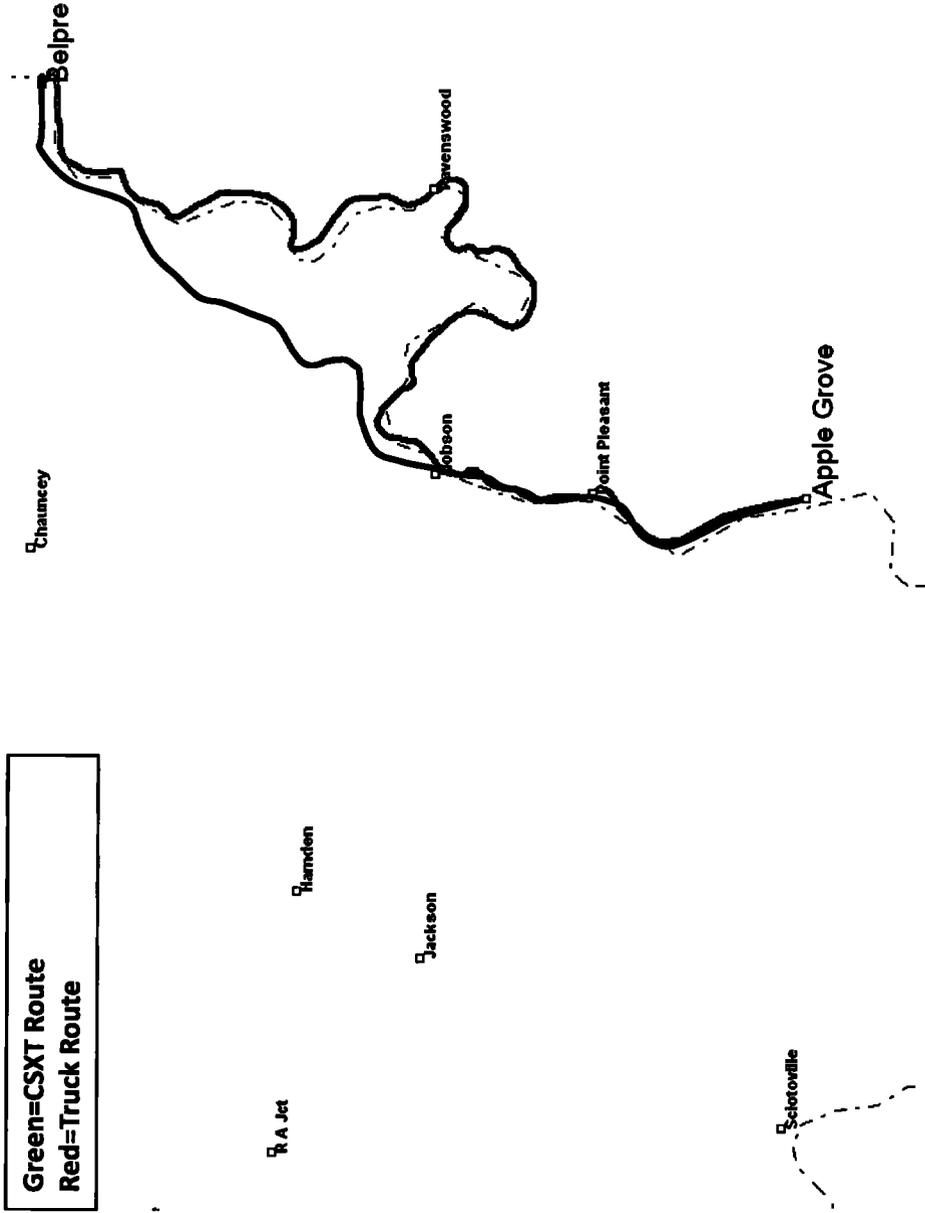
# M&G Movement Number 1A: Apple Grove, WV – Belpre, OH

CSXT Direct: 95 Mi

## Truck Alternative:

Truck: Apple Grove, WV – Belpre, OH (71 Mi)

Green=CSXT Route  
Red=Truck Route



PUBLIC VERSION

CSXT Tariff Rate: \$2,623

Cost of Truck Alternative: {{ }}

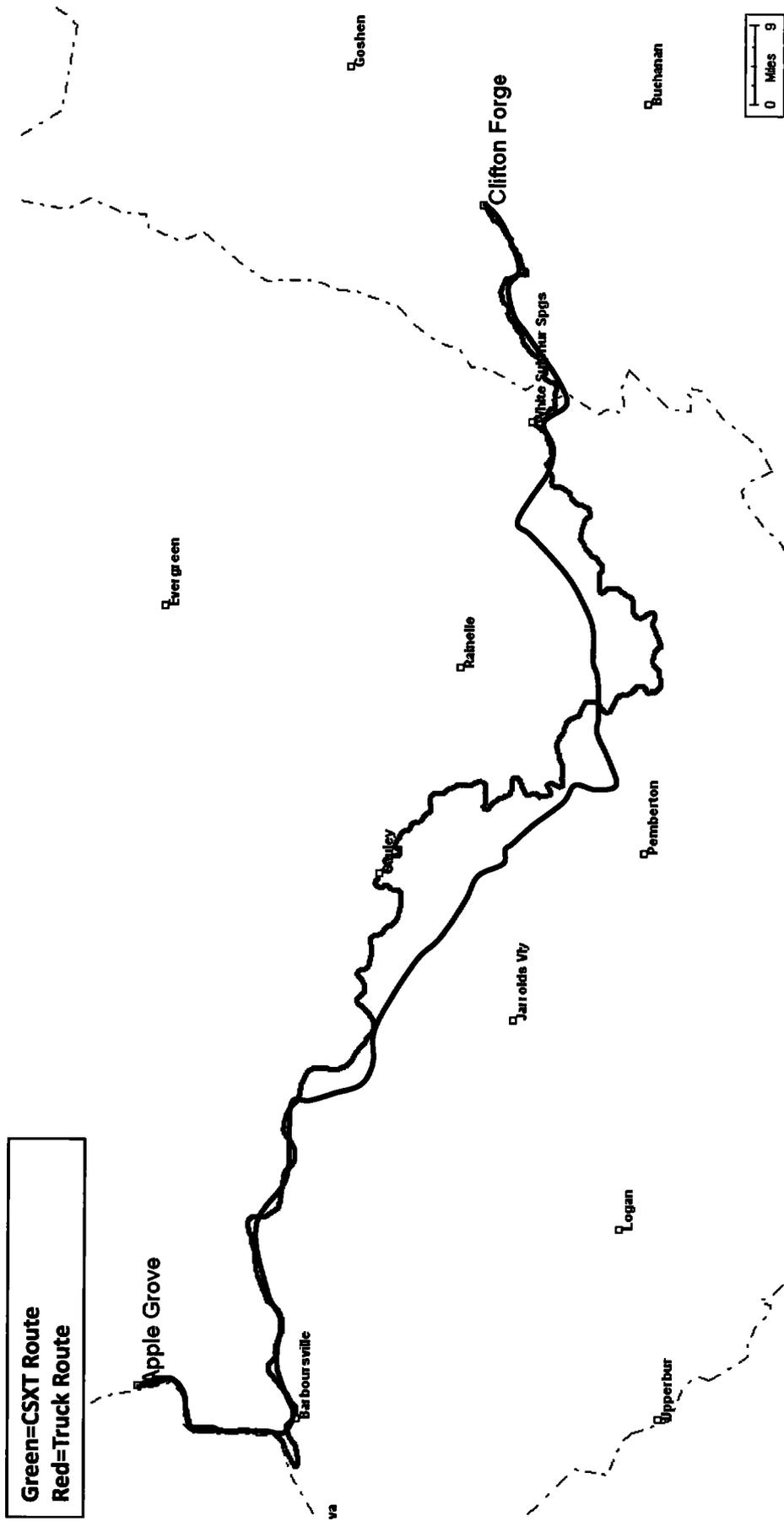
# M&G Movement Number 4A: Apple Grove, WV – Clifton Forge, VA

CSXT Direct: 250 Mi

## Truck Alternative:

Truck: Apple Grove, WV – Clifton Forge, VA (198 Mi)

Green=CSXT Route  
Red=Truck Route



PUBLIC VERSION

CSXT Tariff Rate: \$3,969

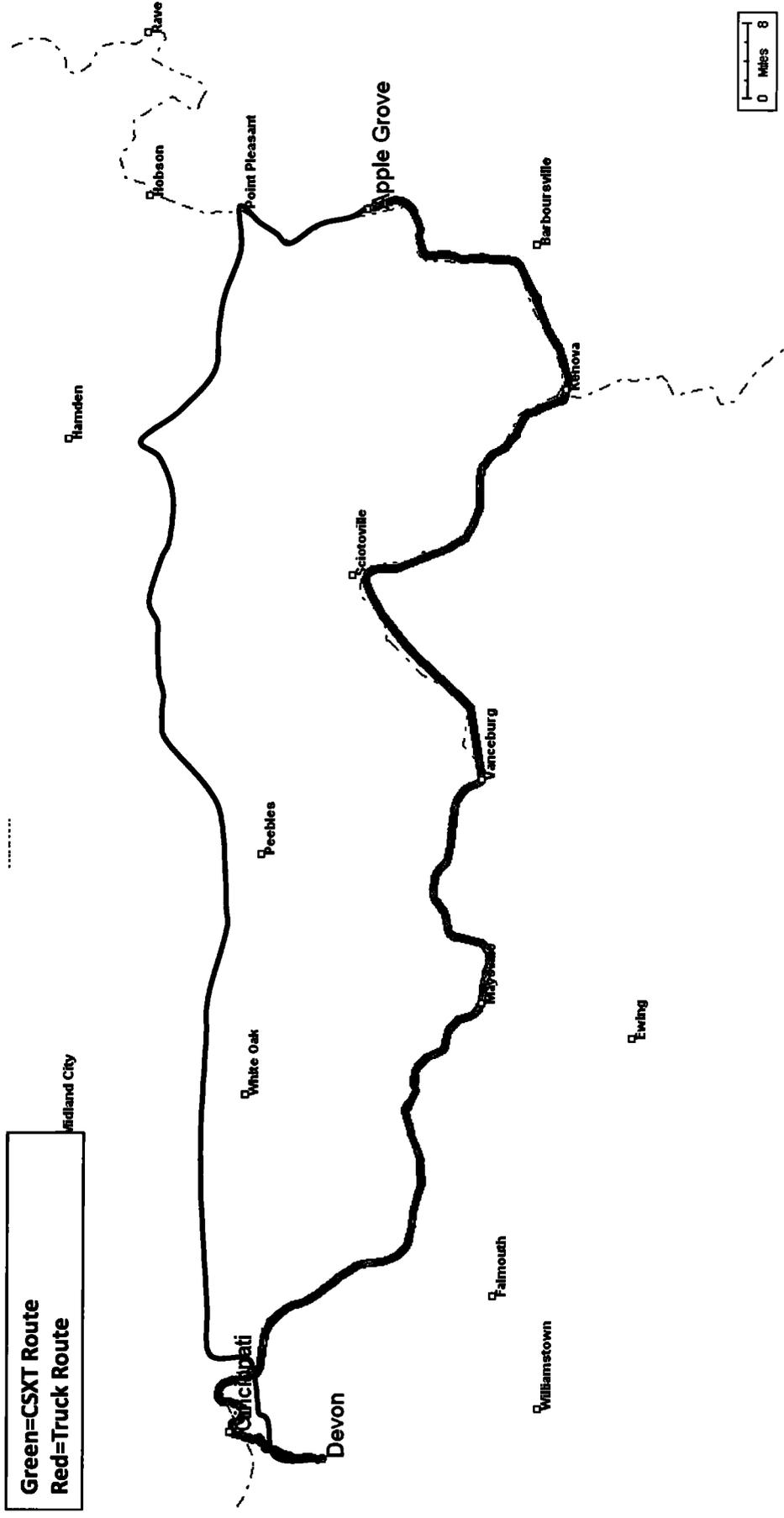
Cost of Truck Alternative: {{ }}

**M&G Movement Number 5A: Apple Grove, WV – Devon, KY**

CSXT Direct (NS Switch at Cincinnati): 199 Mi

**Truck Alternative:**

Truck: Apple Grove, WV – Devon, KY (180 Mi)



**PUBLIC VERSION**

**CSXT Tariff Rate: \$2,849**

**Cost of Truck Alternative: {{ }} }**

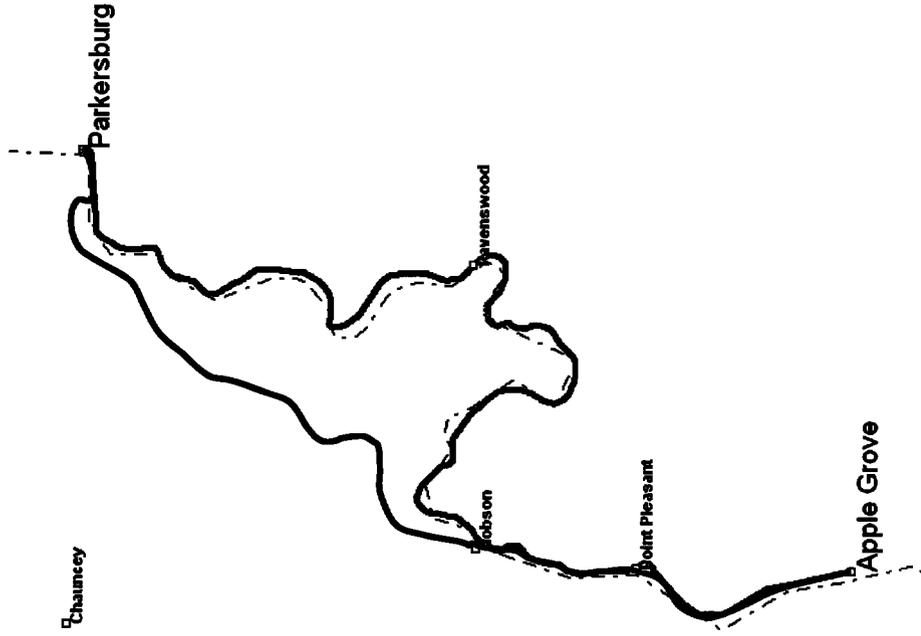
# M&G Movement Number 8A: Apple Grove, WV – Parkersburg, WV

CSXT Direct: 94 Mi

## Truck Alternative:

Truck: Apple Grove, WV – Parkersburg, WV (71 Mi)

Green=CSXT Route  
Red=Truck Route



PUBLIC VERSION

CSXT Tariff Rate: \$2,612

Cost of Truck Alternative: {{ }}

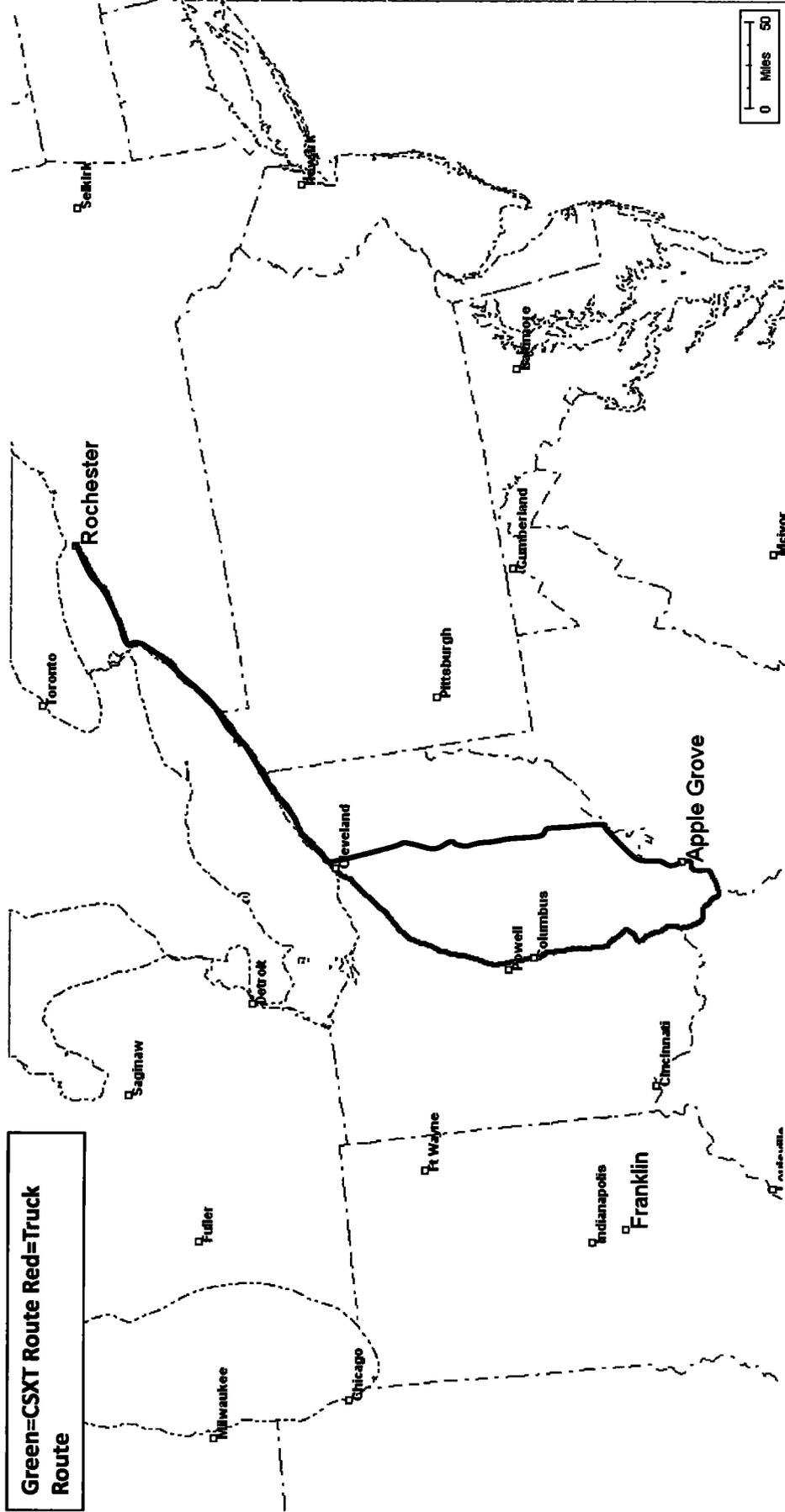
# M&G Movement Number 10A: Apple Grove, WV – Rochester, NY

CSXT Direct: 551 Mi

## Truck Alternative:

Truck: Apple Grove, WV – Rochester, NY (507 Mi)

Green=CSXT Route Red=Truck Route



PUBLIC VERSION

CSXT Tariff Rate: \$8,744

Cost of Truck Alternative: {{ }}

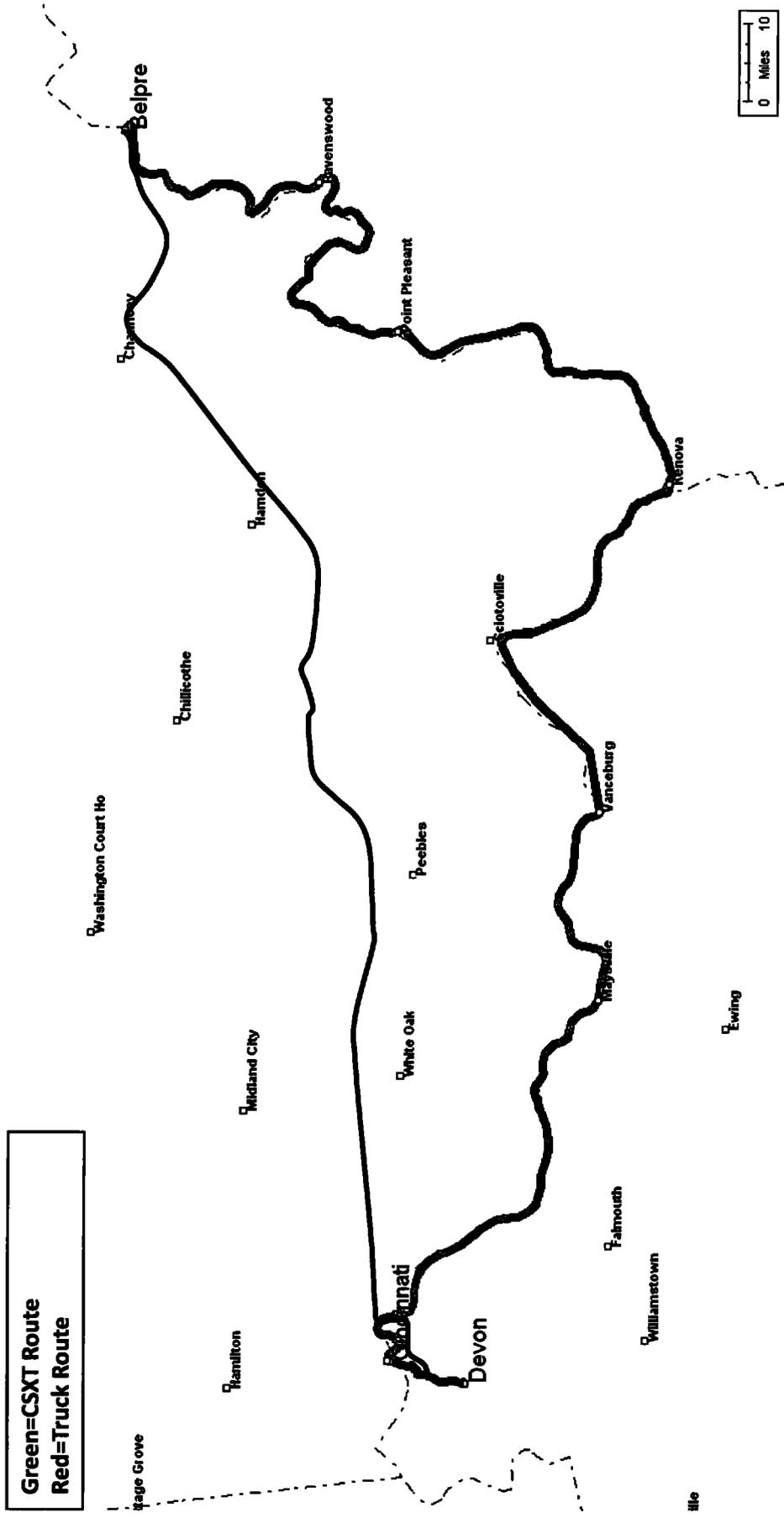
**M&G Movement Number 14A: Belpre, OH – Devon, KY**

CSXT Direct (NS Switch at Cincinnati): 294 Mi

**Truck Alternative:**

Truck: Belpre, OH – Devon, KY (208 Mi)

Green=CSXT Route  
Red=Truck Route



**PUBLIC VERSION**

**CSXT Tariff Rate: \$3,920**

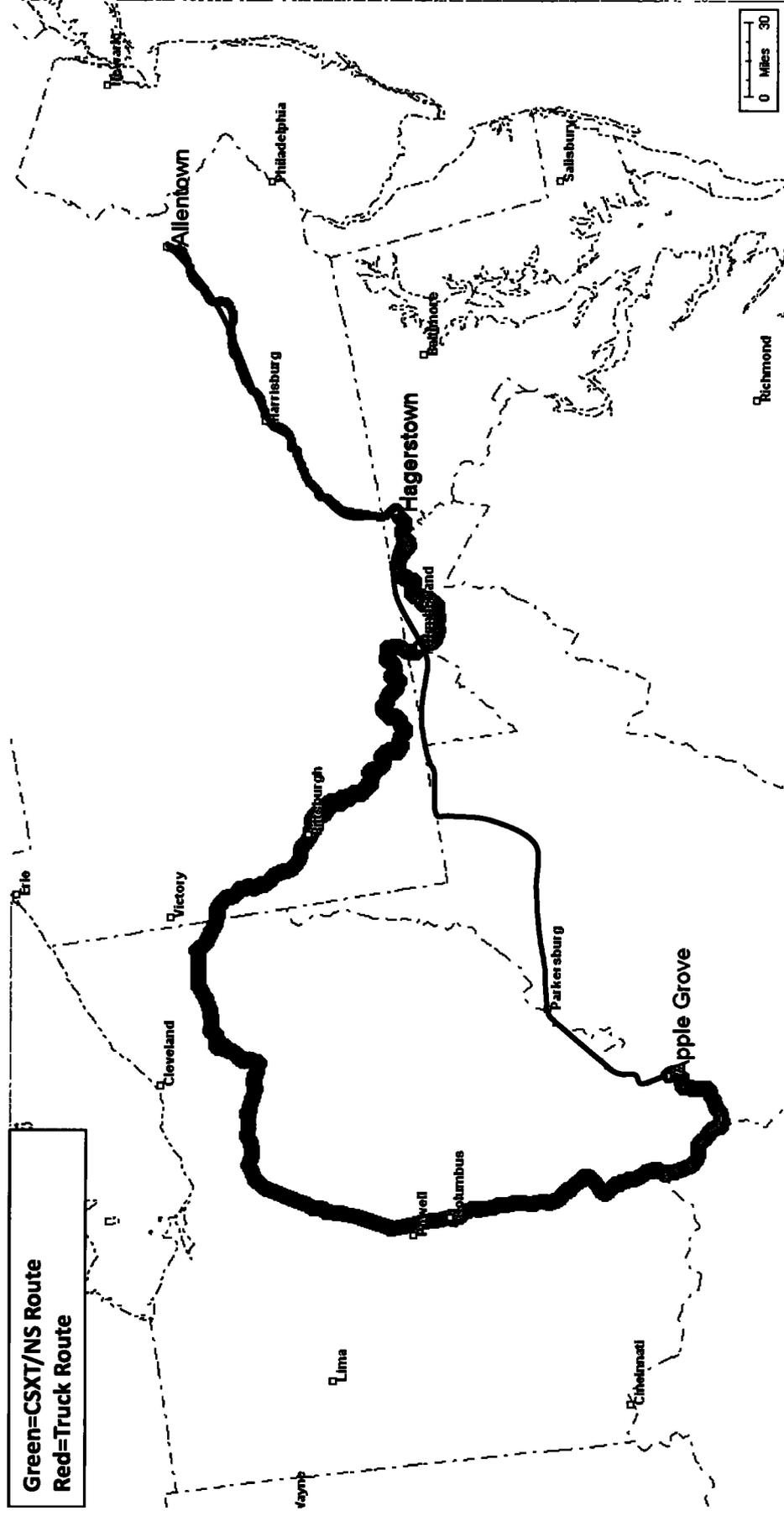
**Cost of Truck Alternative: {{ }} }**

**M&G Movement Number 8B\*: Apple Grove, WV – Allentown, PA**

Apple Grove-CSXT-Hagerstown, MD-NS-Allentown: 829 Mi

**Truck Alternative:**

Truck: Apple Grove, WV – Allentown, PA (470 Mi)

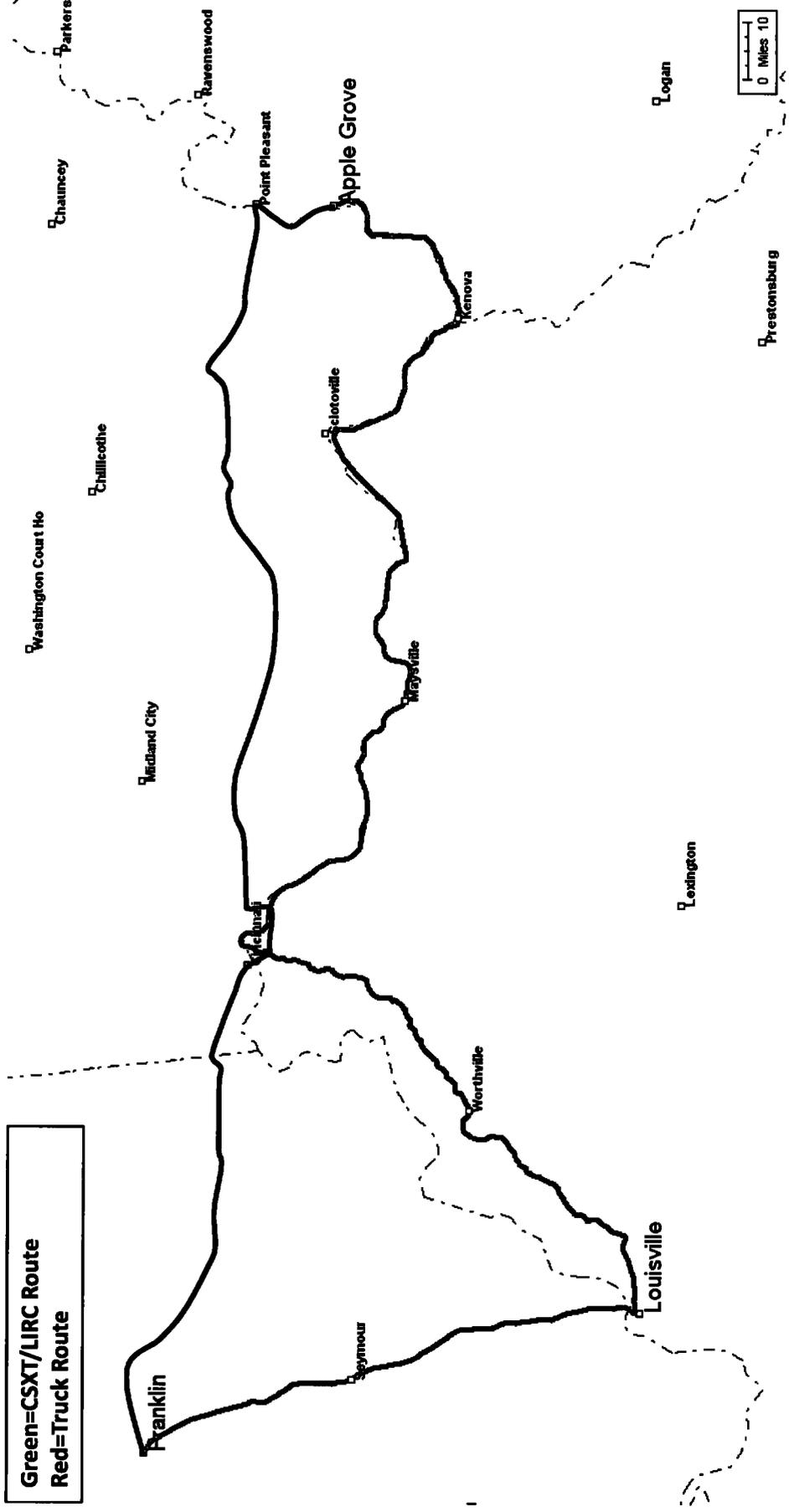


<b>PUBLIC VERSION</b>	<b>Total CSXT/NS Rail Cost: {{</b>	<b>}}</b>	<b>*Movement subject to</b>
	<b>Cost of Truck Alternative: {{</b>	<b>}}</b>	<b>another competitive option</b>
			<b>9</b>

**M&G Movement Number 14B: Apple Grove, WV – Franklin, IN**  
 Apple Grove-CSXT-Louisville, KY-LIRC-Franklin: 383 Mi

**Truck Alternative:**

Truck: Apple Grove, WV – Franklin, IN (280 Mi)



**PUBLIC VERSION**

**Total CSXT/LIRC Rail Cost: {{**

**Cost of Truck Alternative: {{**

10

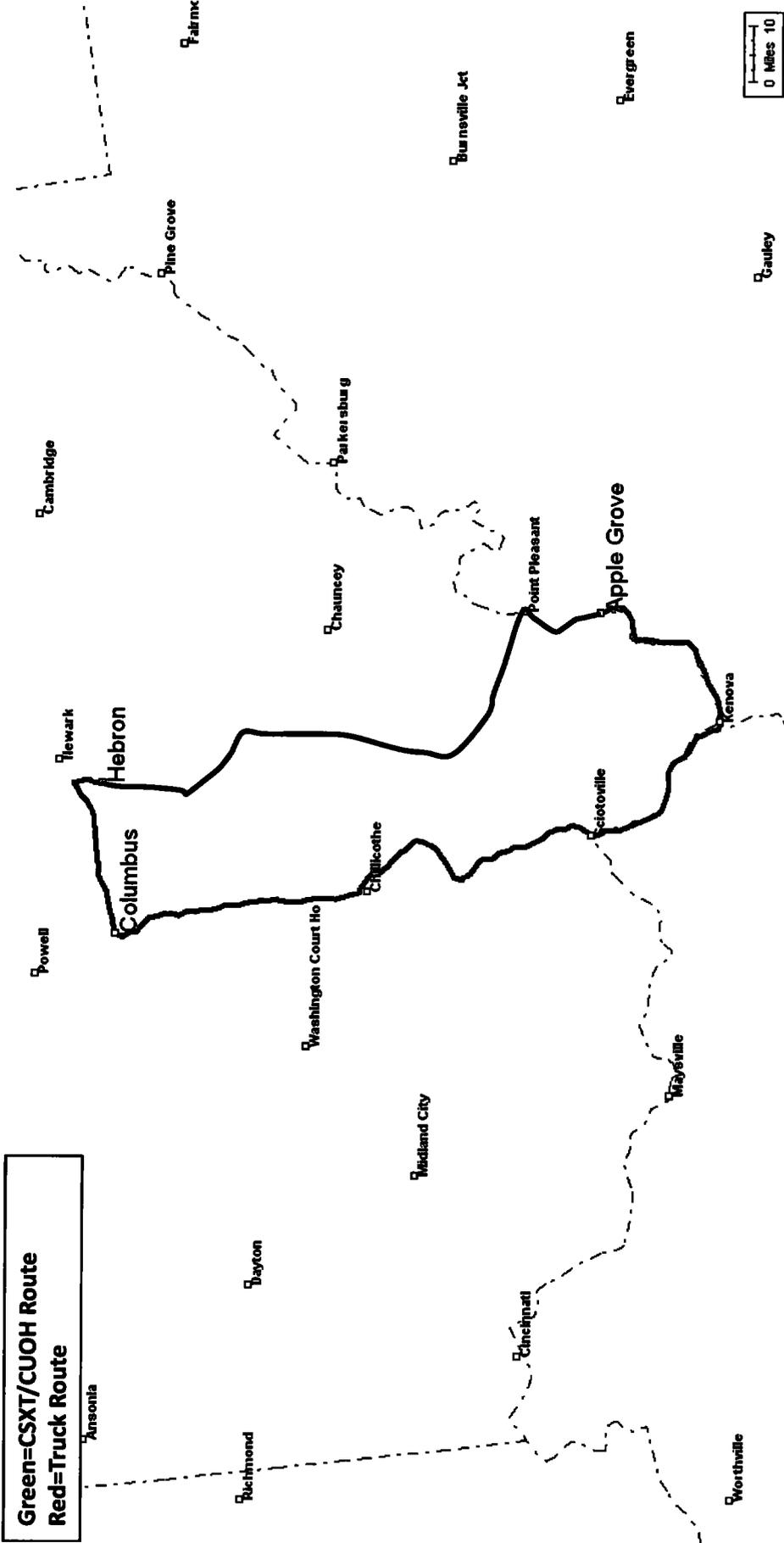


**M&G Movement Number 20B: Apple Grove, WV – Hebron, OH**

Apple Grove-CSXT-Columbus, OH-CUOH-Hebron: 200 Mi

**Truck Alternative:**

Truck: Apple Grove, WV – Hebron, OH (136 Mi)



**PUBLIC VERSION**

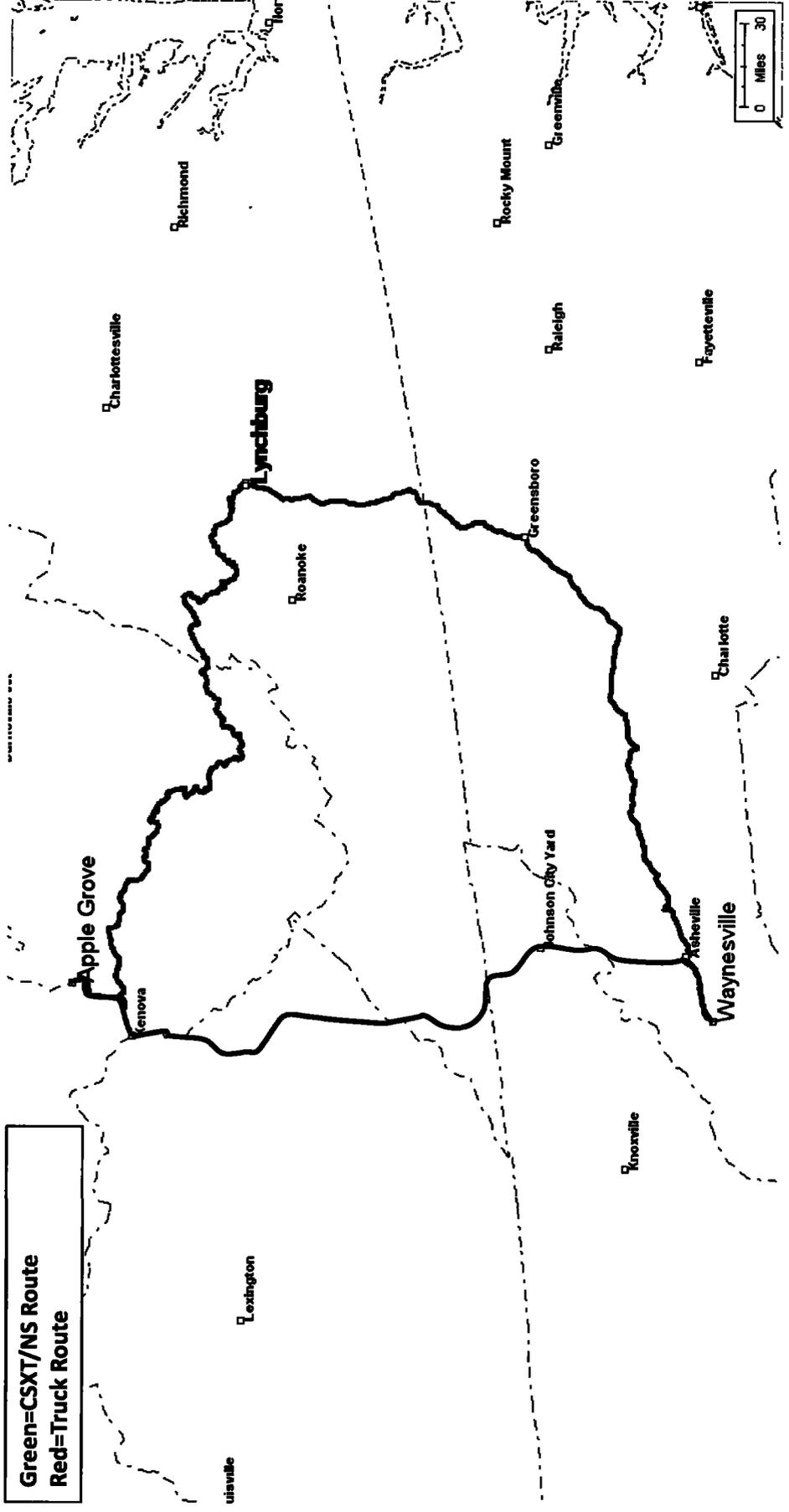
**Total CSXT/CUOH Rail Cost: {{**

**Cost of Truck Alternative: {{**

**M&G Movement Number 35B: Apple Grove, WV – Waynesville, NC**  
**Apple Grove-CSXT-Lynchburg, VA-NS-Waynesville: 671 Mi**

**Truck Alternative:**

Truck: Apple Grove, WV – Waynesville, NC (349 Mi)



**PUBLIC VERSION**

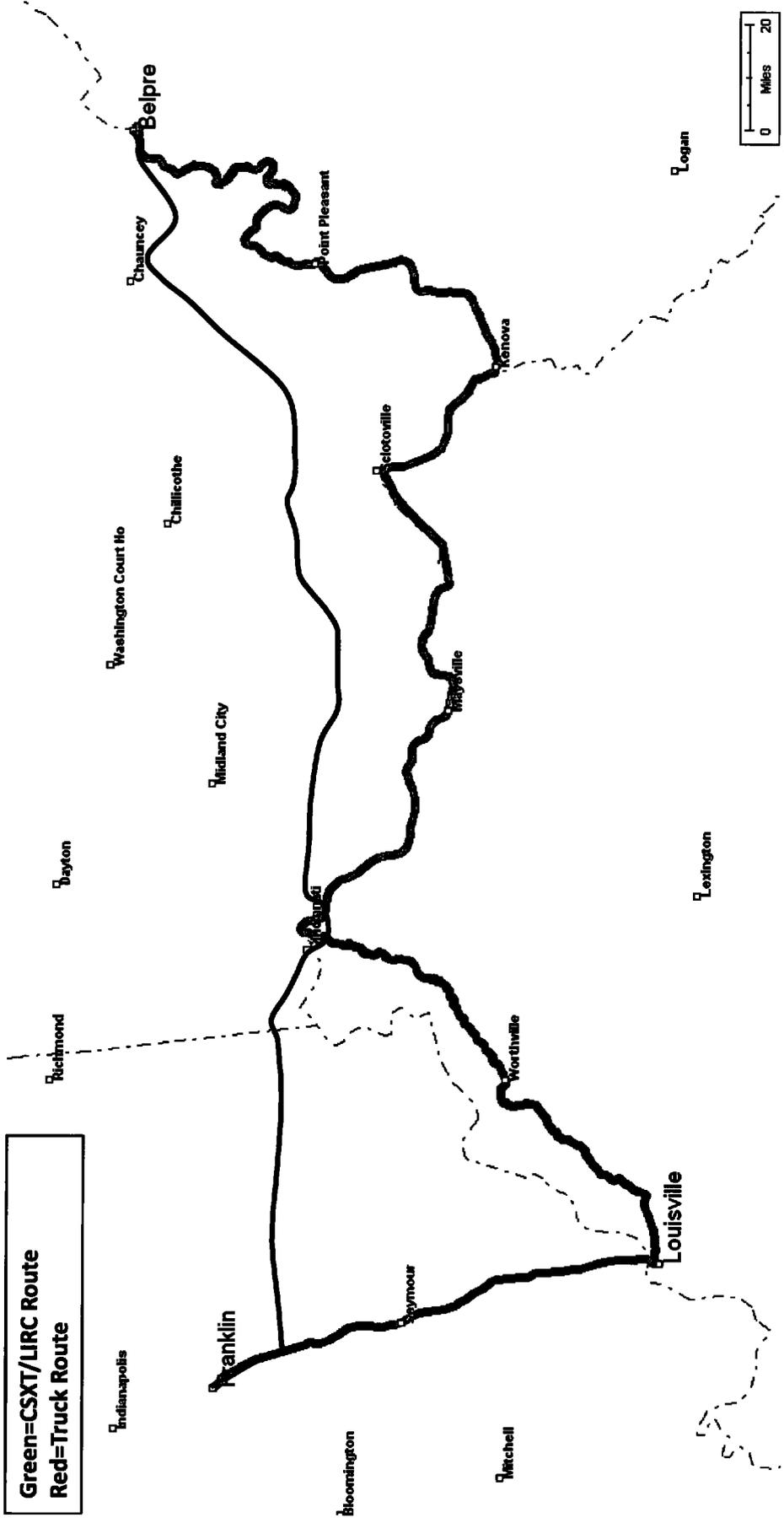
**Total CSXT/NS Rail Cost: {{            }}}**  
**Cost of Truck Alternative: {{            }}}**

**M&G Movement Number 39B: Belpre, OH – Franklin, IN**  
**Apple Grove-CSXT-Louisville, KY-LIRC-Franklin: 478 Mi**

**Truck Alternative:**

Truck: Belpre, OH – Franklin, IN (295 Mi)

Green=CSXT/LIRC Route  
 Red=Truck Route



**PUBLIC VERSION**

**Total CSXT/LIRC Rail Cost: {{**

**Cost of Truck Alternative: {{**

# Maps Illustrating Alternatives Where Shipments Could Be Moved By Truck to a Transload Facility at the Current Interchange Point

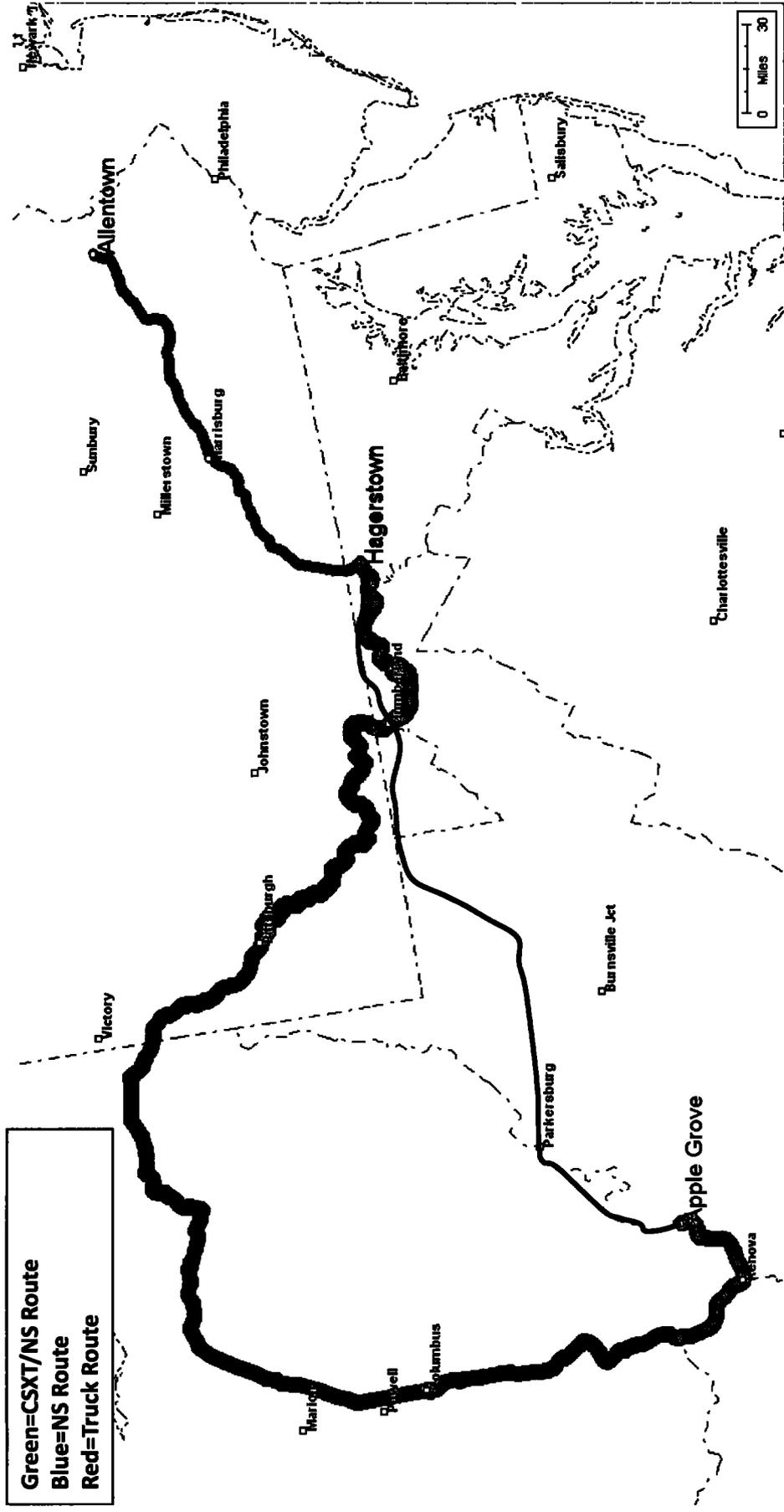
**PUBLIC VERSION**

**M&G Movement Number 8B\*: Apple Grove, WV – Allentown, PA**  
**Apple Grove-CSXT-Hagerstown, MD-NS-Allentown: 829 Mi**

**Truck/Rail Alternative:**

Truck: Apple Grove, WV – Hagerstown, MD (329 Mi)

NS Rail: Hagerstown, MD – Allentown, PA (165 Mi)



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,418**

**Cost of Truck/Rail Alternative: {{**

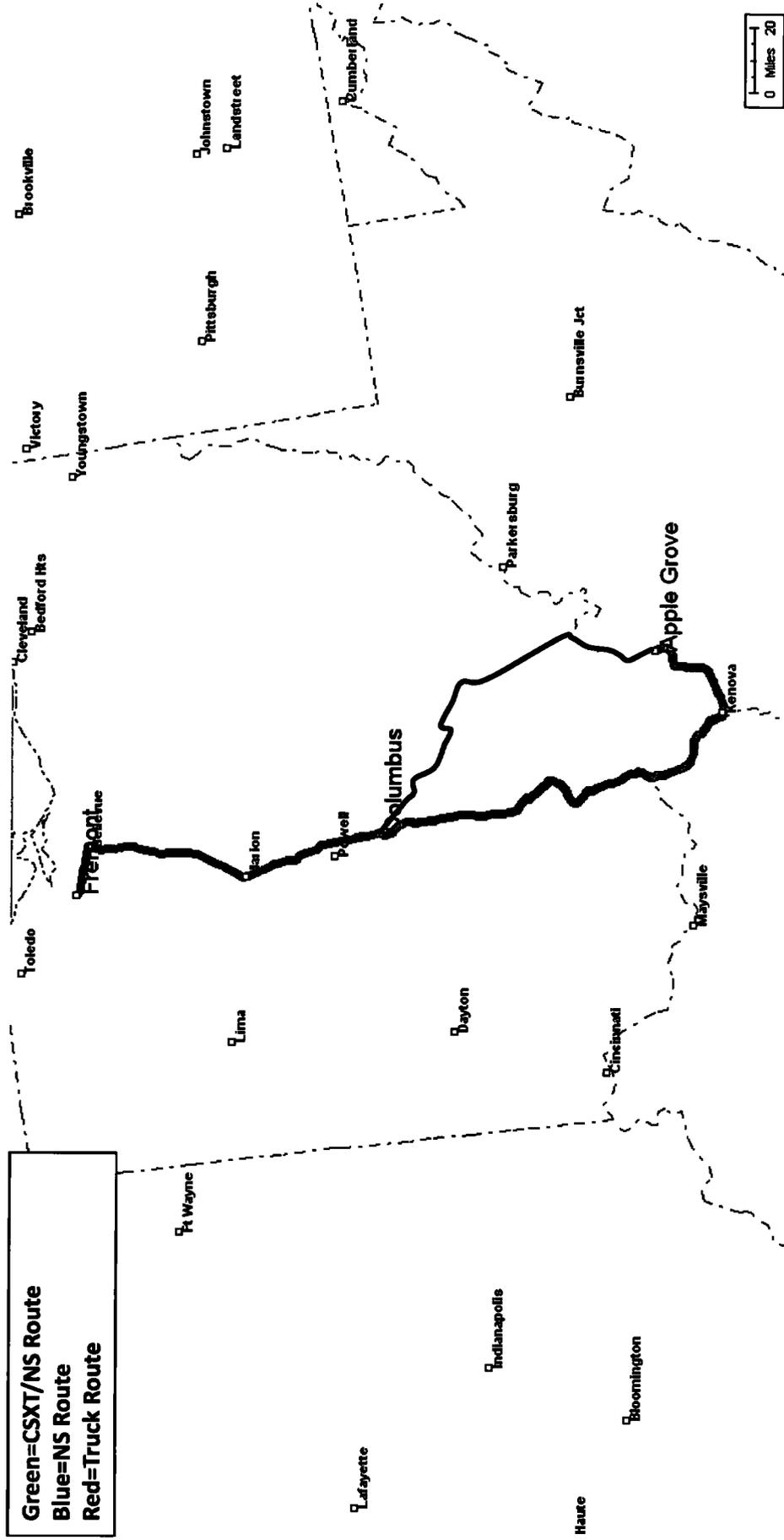
**\*Movement subject to another competitive option 16**

**M&G Movement Number 15B: Apple Grove, WV – Fremont, OH**  
 Apple Grove-CSXT-Columbus, OH-NS-Fremont: 277 Mi

**Truck/Rail Alternative:**

Truck: Apple Grove, WV – Columbus, OH (129 Mi)

NS Rail: Columbus, OH – Fremont, OH (111 Mi)



**PUBLIC VERSION**

**CSXT Tariff Rate: \$2,993**

**Cost of Truck/Rail Alternative: {{ }}**

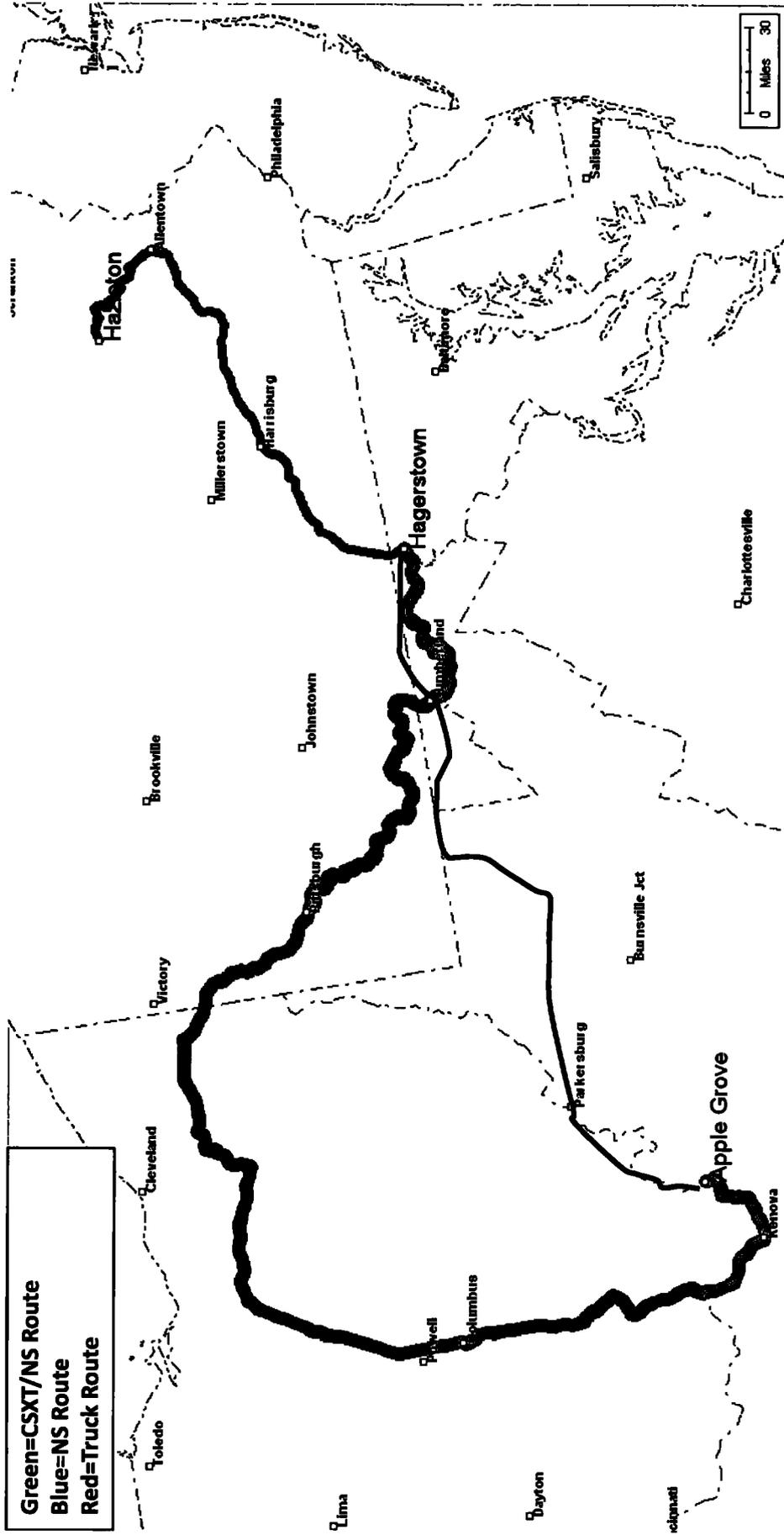


**M&G Movement Number 19B: Apple Grove, WV – Hazleton, PA**  
**Apple Grove-CSXT-Hagerstown, MD-NS-Hazleton: 882 Mi**

**Truck/Rail Alternative:**

Truck: Apple Grove, WV – Hagerstown, MD (329 Mi)

NS Rail: Hagerstown, MD – Hazleton, PA (217 Mi)



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,418**

**Cost of Truck/Rail Alternative : {{            }} }**

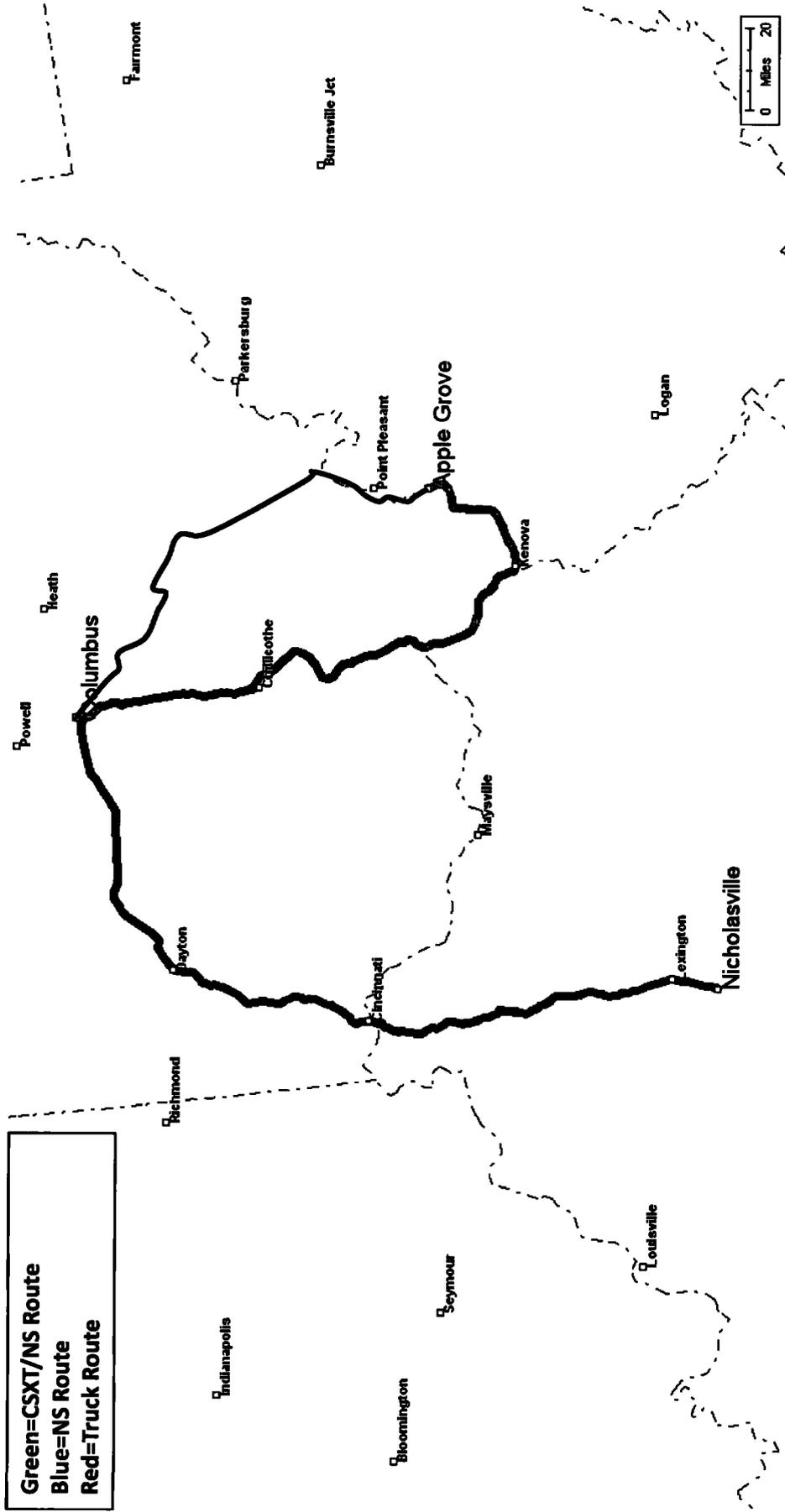
**M&G Movement Number 24B: Apple Grove, WV – Nicholasville, KY**  
 Apple Grove-CSXT-Columbus, OH-NS-Nicholasville: 380 Mi

**Truck/Rail Alternative:**

Truck: Apple Grove, WV – Columbus, OH (129 Mi)

NS Rail: Columbus, OH – Nicholasville, KY (214 Mi)

Green=CSXT/NS Route  
 Blue=NS Route  
 Red=Truck Route



**PUBLIC VERSION**

**CSXT Tariff Rate: \$2,993**

**Cost of Truck/Rail Alternative : {{ }} }**

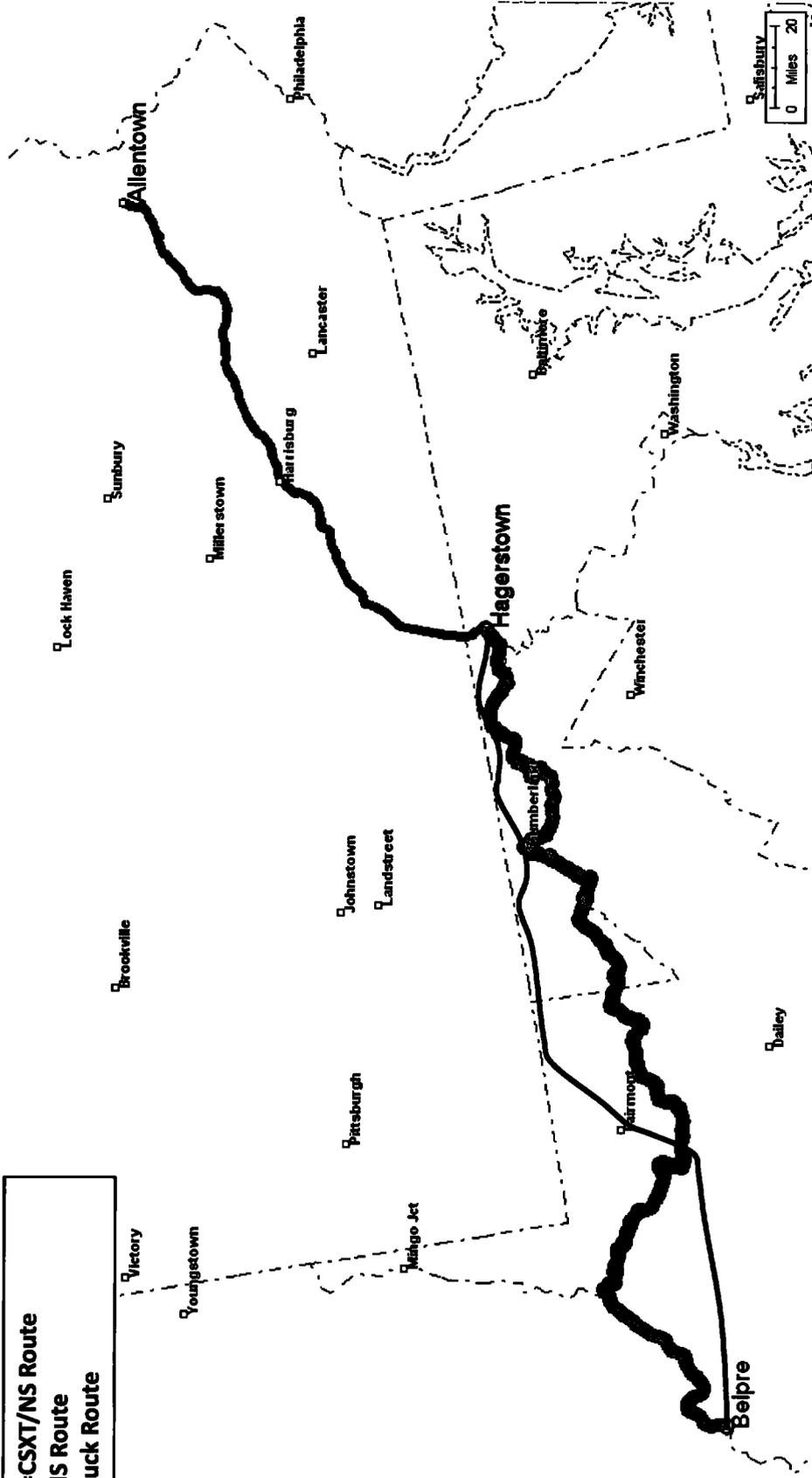
**M&G Movement Number 37B: Belpre, OH – Allentown, PA**  
**Belpre-CSXT-Hagerstown, MD-NS-Allentown: 485 Mi**

**Truck/Rail Alternative:**

Truck: Belpre, OH – Hagerstown, MD (249 Mi)

NS Rail: Hagerstown, MD – Allentown, PA (165 Mi)

Green=CSXT/NS Route  
 Blue=NS Route  
 Red=Truck Route



**PUBLIC VERSION**

**CSXT Tariff Rate: \$4,753**

**Cost of Truck/Rail Alternative : {{ }}**

# Maps Illustrating Alternatives Where Shipments Could Be Trucked to CFER's Lima Transload Facility for CFER Rail Transportation to Chicago

**PUBLIC VERSION**

**M&G Movement Number 7B: Apple Grove, WV – Aguila, AZ**

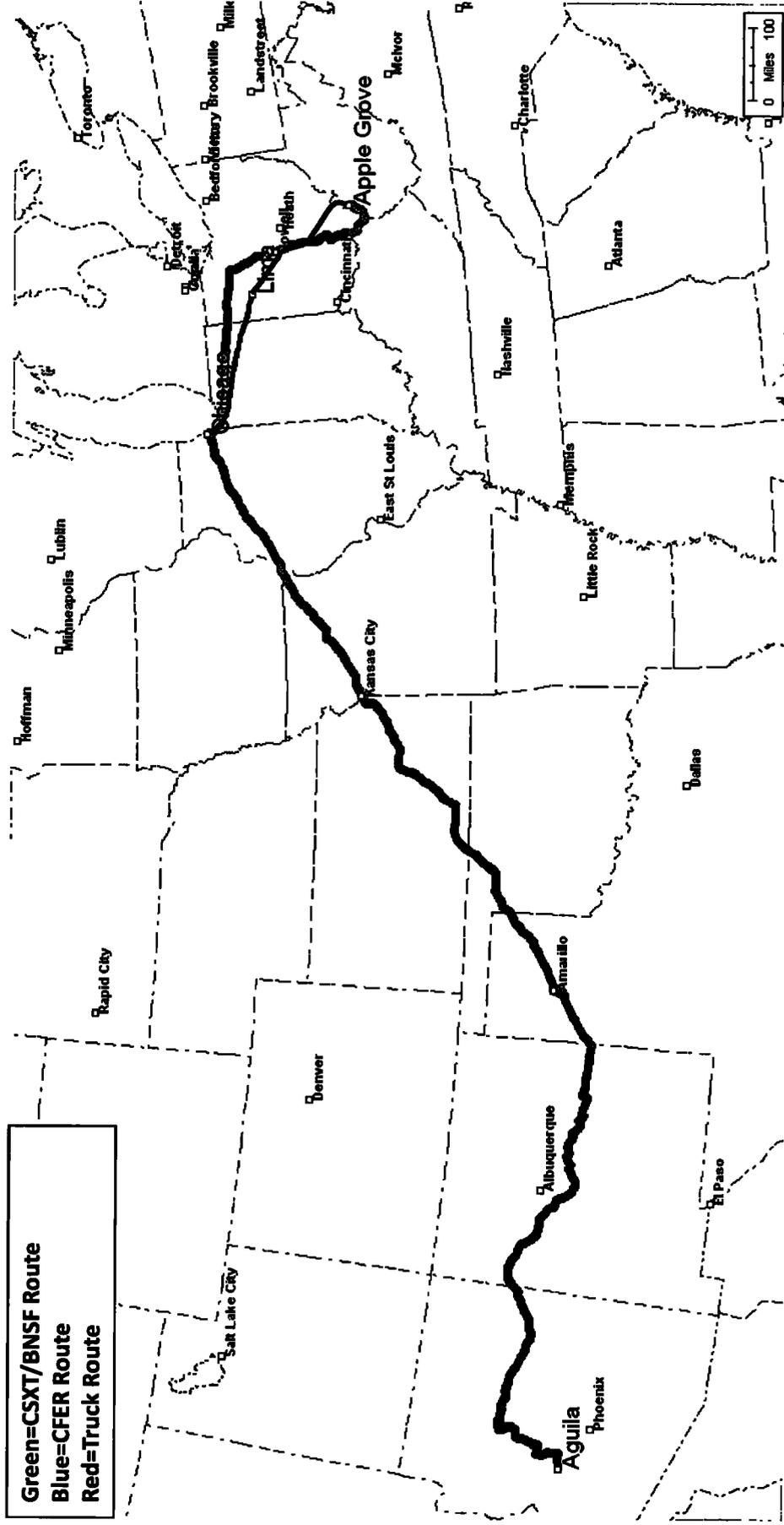
Apple Grove-CSXT-Chicago, IL-BNSF-Aguila: 2,330 Mi (CSXT Portion: 488 Mi)

**Truck/Rail Alternative to CSXT Portion:**

Truck: Apple Grove, WV – Lima, OH (220 Mi)

CFER Rail: Lima, OH – Chicago, IL (207 Mi)

Green=CSXT/BNSF Route  
 Blue=CFER Route  
 Red=Truck Route



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,664**

**Cost of Truck/Rail Alternative to CSXT Portion: {{ }}**

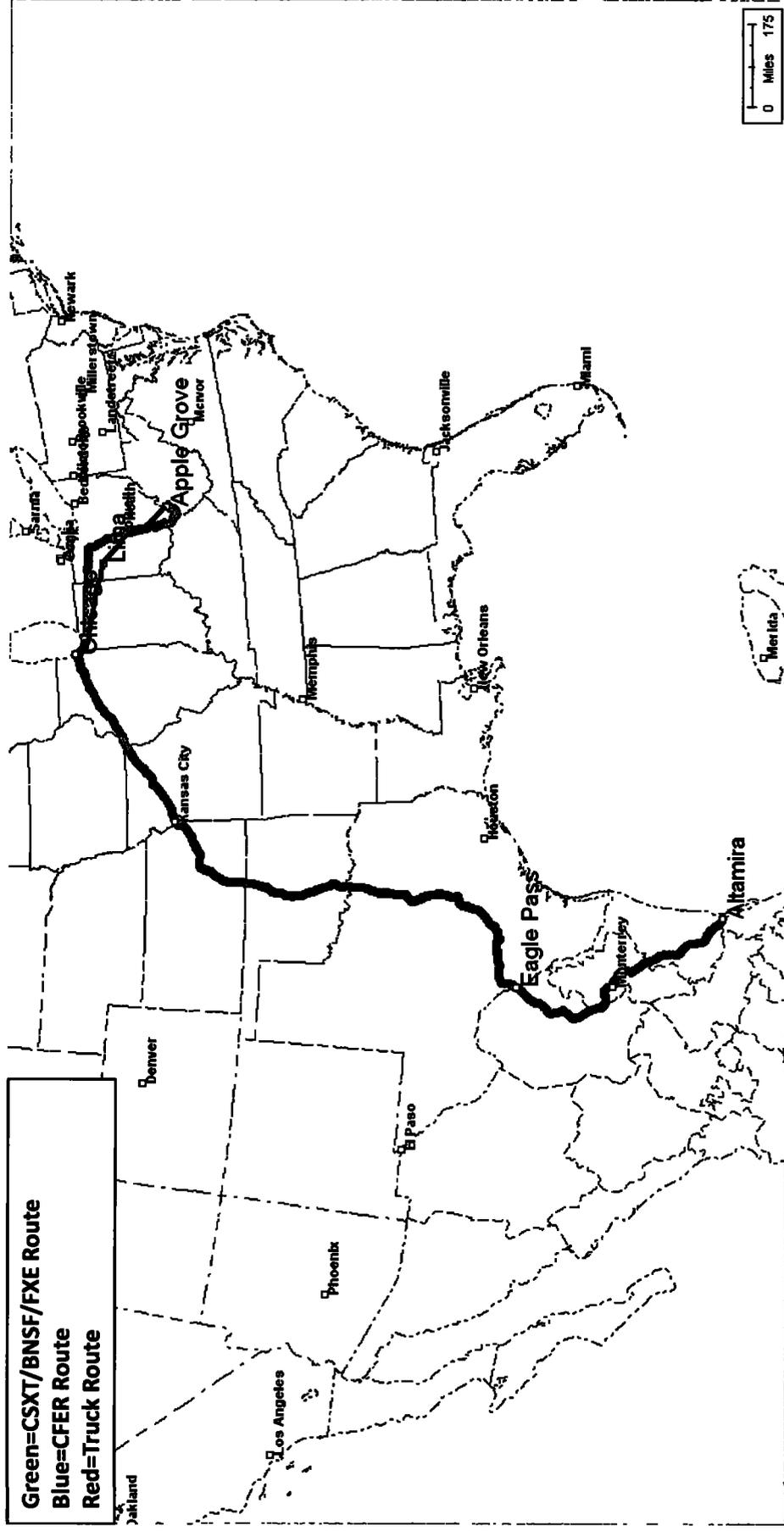
**M&G Movement Number 9B: Apple Grove, WV – Altamira, TM**

Apple Grove-CSXT-Chicago-BNSF-Eagle Pass, TX-FXE-Altamira: 2,524 Mi (CSXT Portion: 488 Mi)

**Truck/Rail Alternative to CSXT Portion :**

Truck: Apple Grove, WV – Lima, OH (220 Mi)

CFER Rail: Lima, OH – Chicago, IL (207 Mi)



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,664**

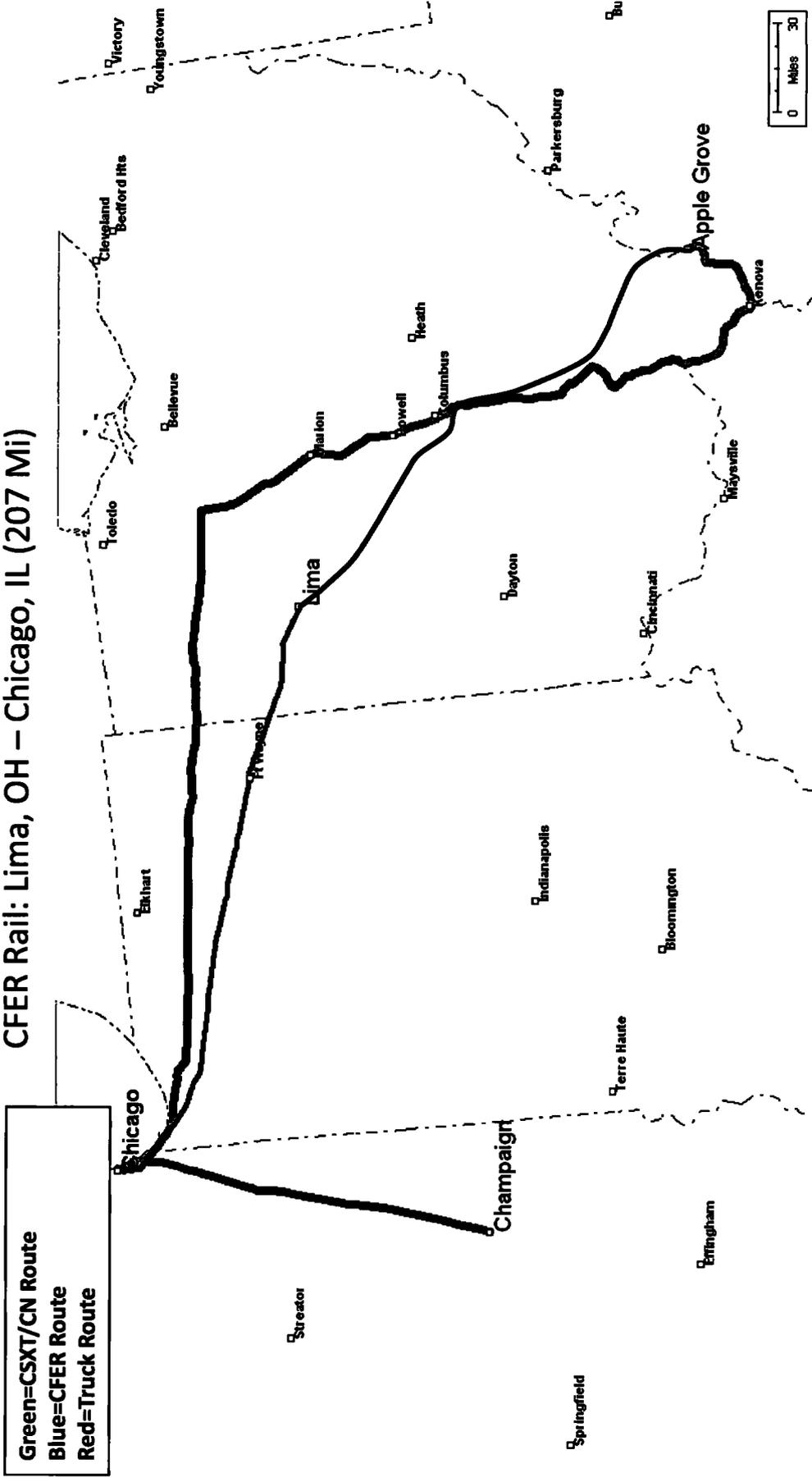
**Cost of Truck/Rail Alternative to CSXT Portion: {{ }}**

**M&G Movement Number 10B: Apple Grove, WV – Champaign, IL**  
**Apple Grove-CSXT-Chicago, IL-CN-Champaign: 617 Mi (CSXT Portion: 488 Mi)**

**Truck/Rail Alternative to CSXT Portion :**

Truck: Apple Grove, WV – Lima, OH (220 Mi)

CFER Rail: Lima, OH – Chicago, IL (207 Mi)



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,664**

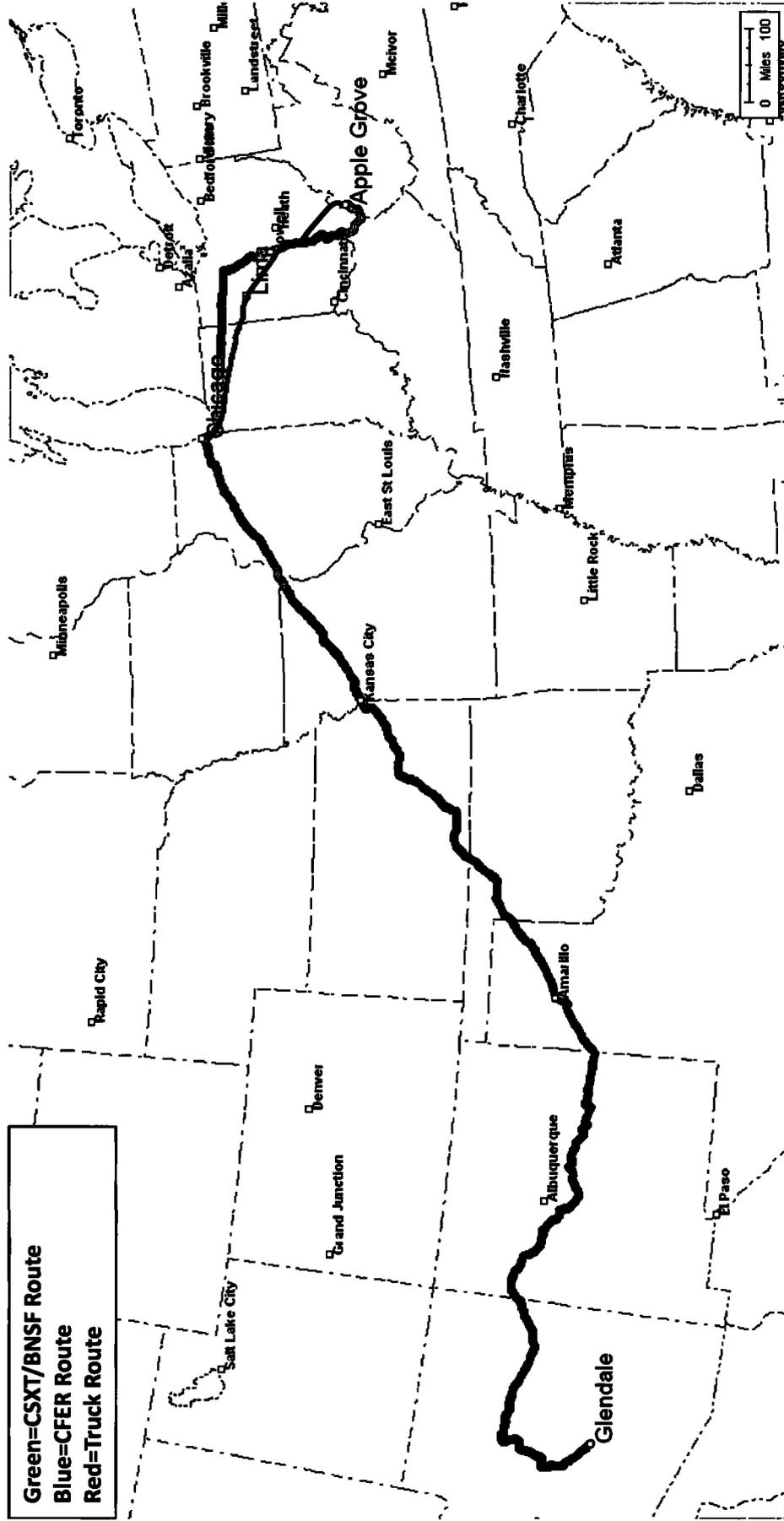
**Cost of Truck/Rail Alternative to CSXT Portion: {{ }} }**

**M&G Movement Number 16B: Apple Grove, WV – Glendale, AZ**  
**Apple Grove-CSXT-Chicago, IL-BNSF-Glendale: 2,356 Mi (CSXT Portion: 488 Mi)**

**Truck/Rail Alternative to CSXT Portion:**

Truck: Apple Grove, WV – Lima, OH (220 Mi)

CFER Rail: Lima, OH – Chicago, IL (207 Mi)



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,664**

**Cost of Truck/Rail Alternative to CSXT Portion: { { }**

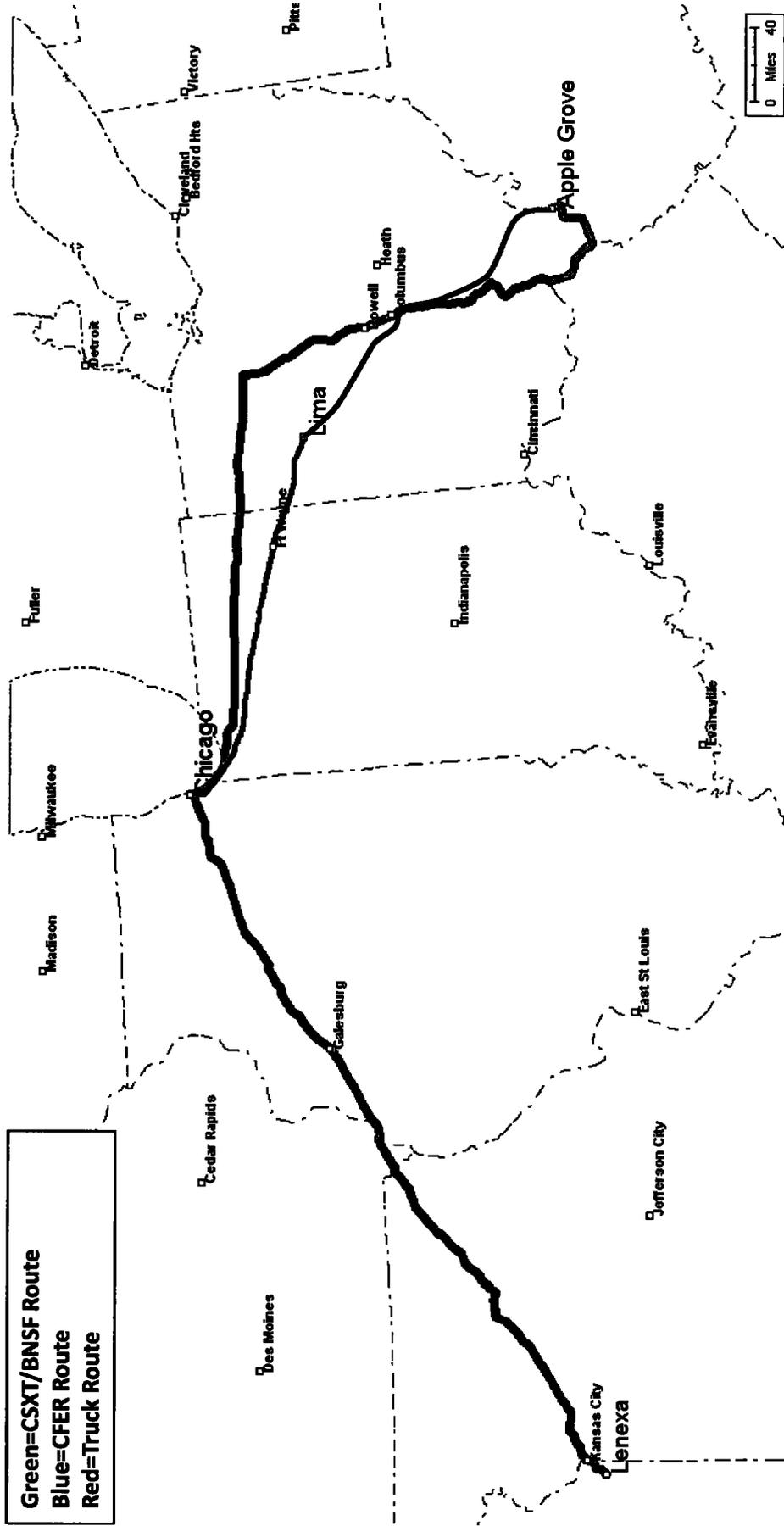
**M&G Movement Number 21B: Apple Grove, WV – Lenexa, KS**  
**Apple Grove-CSXT-Chicago, IL-BNSF-Lenexa: 941 Mi (CSXT Portion: 488 Mi)**

**Truck/Rail Alternative to CSXT Portion:**

Truck: Apple Grove, WV – Lima, OH (220 Mi)

CFER Rail: Lima, OH – Chicago, IL (207 Mi)

Green=CSXT/BNSF Route  
 Blue=CFER Route  
 Red=Truck Route



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,664**

**Cost of Truck/Rail Alternative to CSXT Portion: {{ }} }**

**M&G Movement Number 22B: Apple Grove, WV – Little Rock, AR**

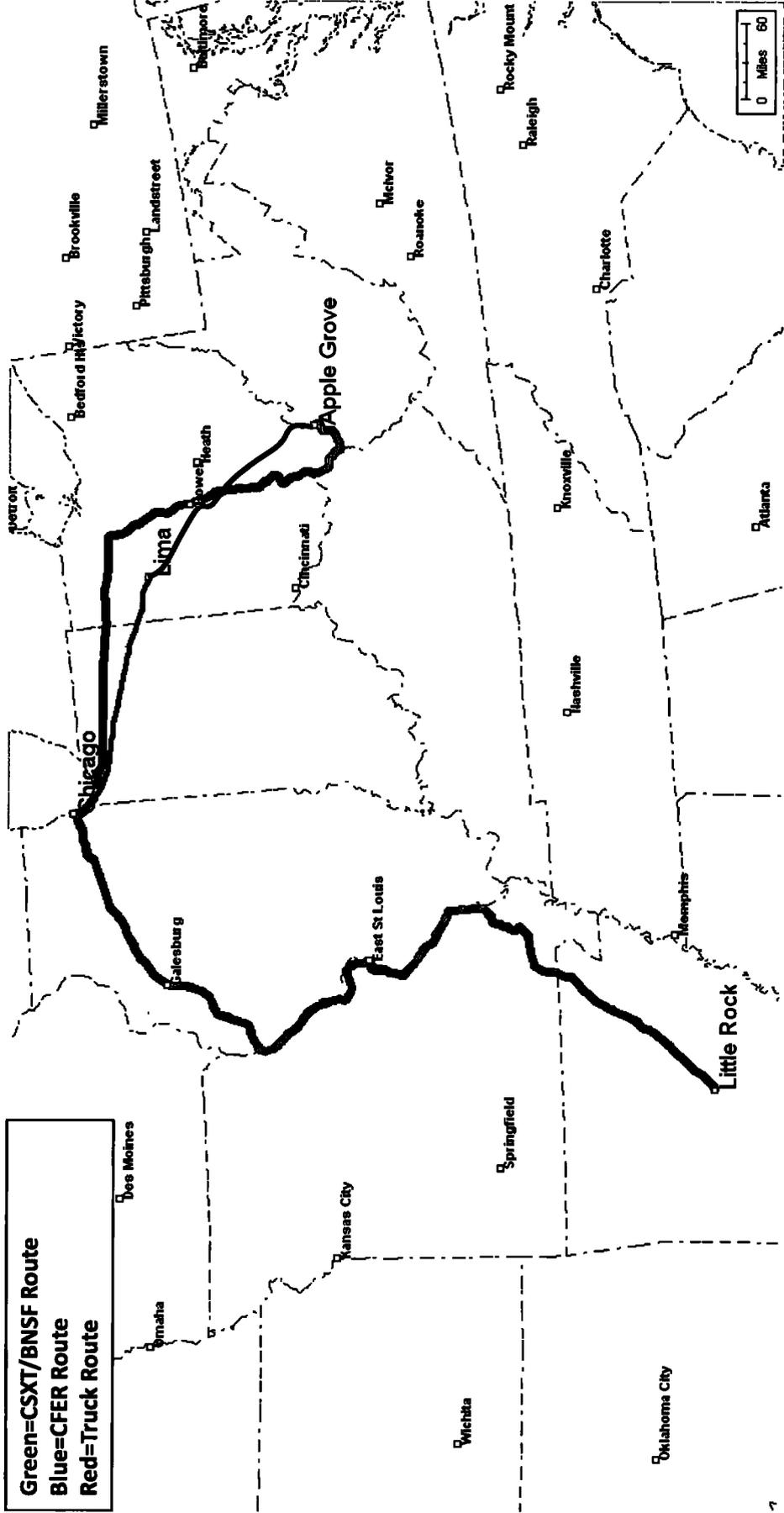
Apple Grove-CSXT-Chicago, IL-BNSF (UP switch)-Little Rock: 1,279 Mi (CSXT Portion: 488 Mi)

**Truck/Rail Alternative to CSXT Portion:**

Truck: Apple Grove, WV – Lima, OH (220 Mi)

CFER Rail: Lima, OH – Chicago, IL (207 Mi)

Green=CSXT/BNSF Route  
 Blue=CFER Route  
 Red=Truck Route



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,664**

**Cost of Truck/Rail Alternative to CSXT Portion: {{ }}**

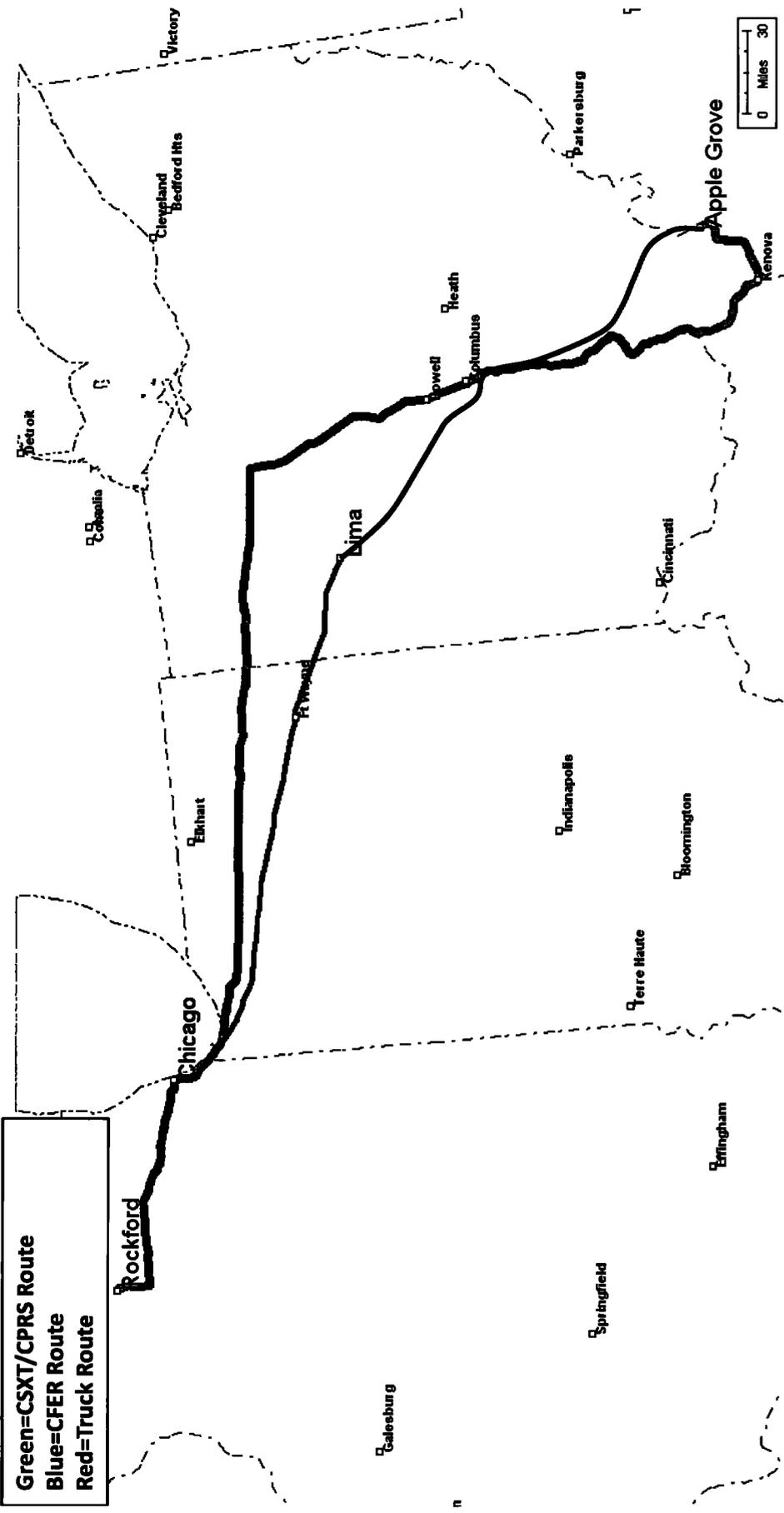
**M&G Movement Number 25B: Apple Grove, WV – Rockford, IL**  
**Apple Grove-CSXT-Chicago, IL-CPRS-Rockford: 583 Mi (CSXT Portion: 488 Mi)**

**Truck/Rail Alternative to CSXT Portion:**

Truck: Apple Grove, WV – Lima, OH (220 Mi)

CFER Rail: Lima, OH – Chicago, IL (207 Mi)

Green=CSXT/CPRS Route  
 Blue=CFER Route  
 Red=Truck Route



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,664**

**Cost of Truck/Rail Alternative to CSXT Portion: {{ }} }**

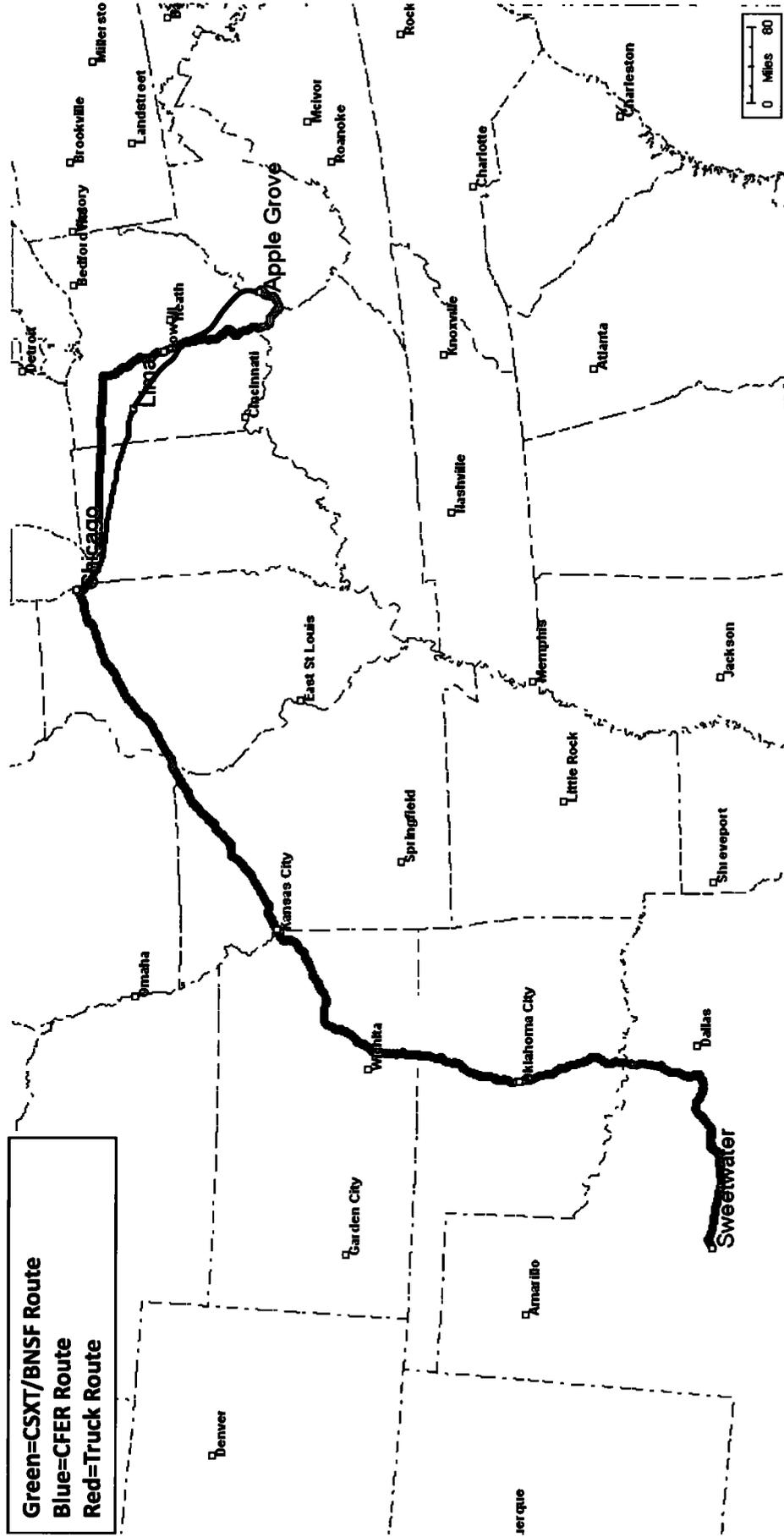


**M&G Movement Number 30B: Apple Grove, WV – Sweetwater, TX**  
**Apple Grove-CSXT-Chicago, IL-BNSF-Sweetwater: 1,691 Mi (CSXT Portion: 488 Mi)**

**Truck/Rail Alternative to CSXT Portion:**

Truck: Apple Grove, WV – Lima, OH (220 Mi)

CFER Rail: Lima, OH – Chicago, IL (207 Mi)



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,664**

**Cost of Truck/Rail Alternative to CSXT Portion: {{ }}**



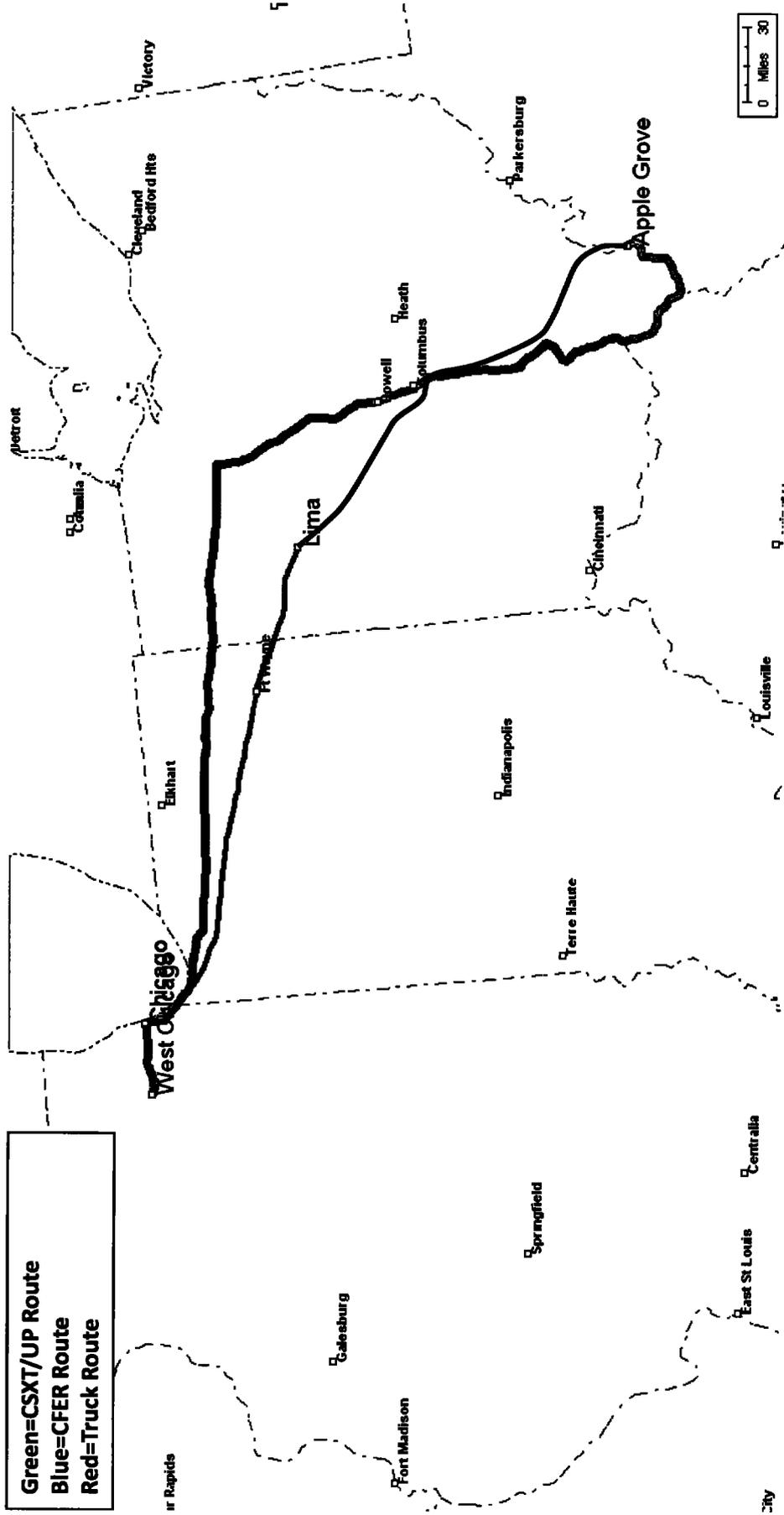
**M&G Movement Number 34B: Apple Grove, WV – West Chicago, IL**  
**Apple Grove-CSXT-Chicago, IL-UP-West Chicago: 517 Mi (CSXT Portion: 488 Mi)**

**Truck/Rail Alternative to CSXT Portion:**

Truck: Apple Grove, WV – Lima, OH (220 Mi)

CFER Rail: Lima, OH – Chicago, IL (207 Mi)

Green=CSXT/UP Route  
 Blue=CFER Route  
 Red=Truck Route



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,664**

**Cost of Truck/Rail Alternative to CSXT Portion: {{ }} }**

# Maps Illustrating Alternatives Where CFER Could Transport Shipments By Rail to Lima For Transload to Trucks for Delivery

**PUBLIC VERSION**

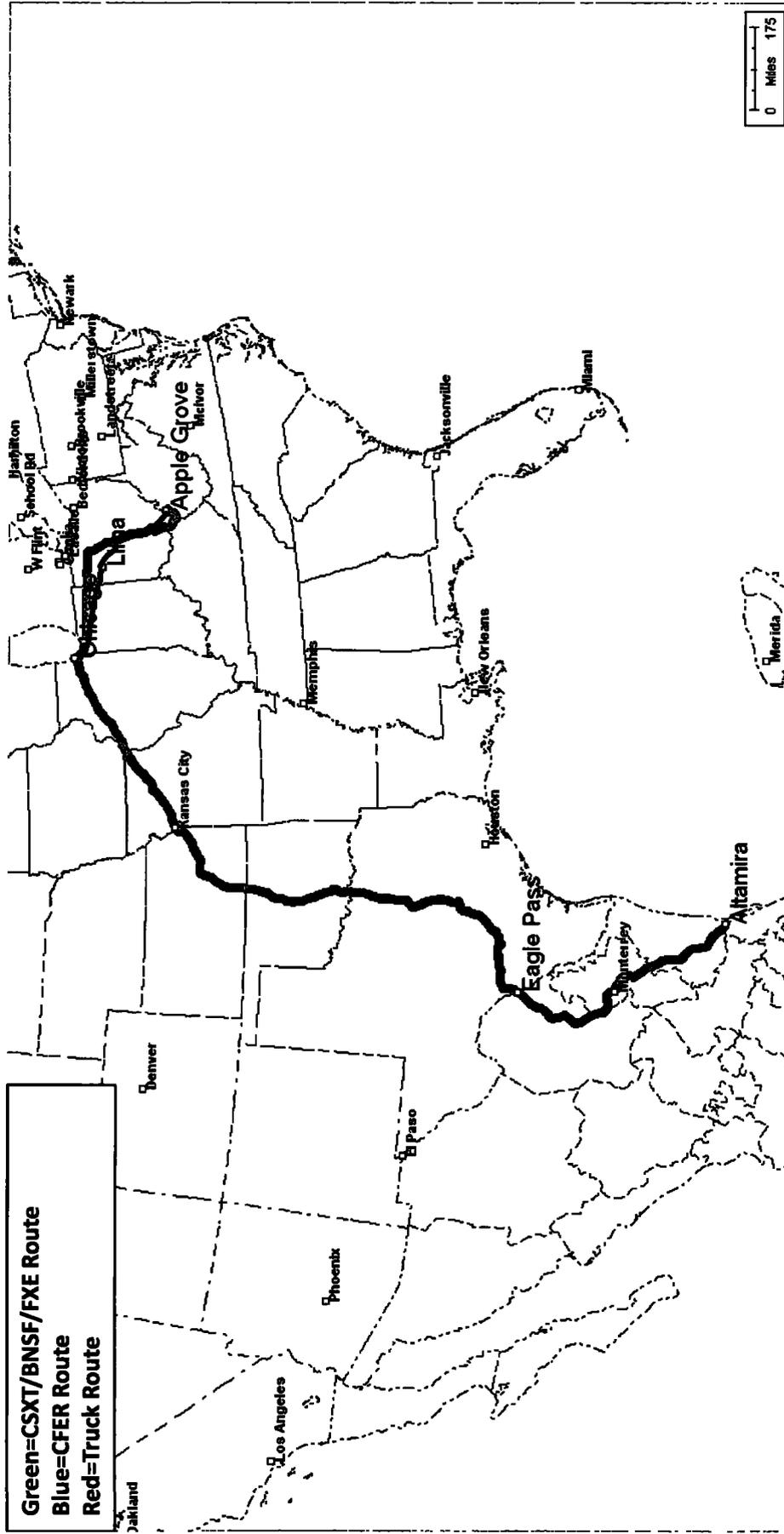
**M&G Movement Number 1B: Altamira, TM – Apple Grove, WV**

Altamira-FXE-Eagle Pass, TX-BNSF-Chicago-CSXT-Apple Grove: 2,524 Mi (CSXT Portion: 488 Mi)

**Rail/Truck Alternative to CSXT Portion:**

CFER Rail: Chicago, IL – Lima, OH (207 Mi)

Truck: Lima, OH – Cambridge, OH (220 Mi)



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,717**

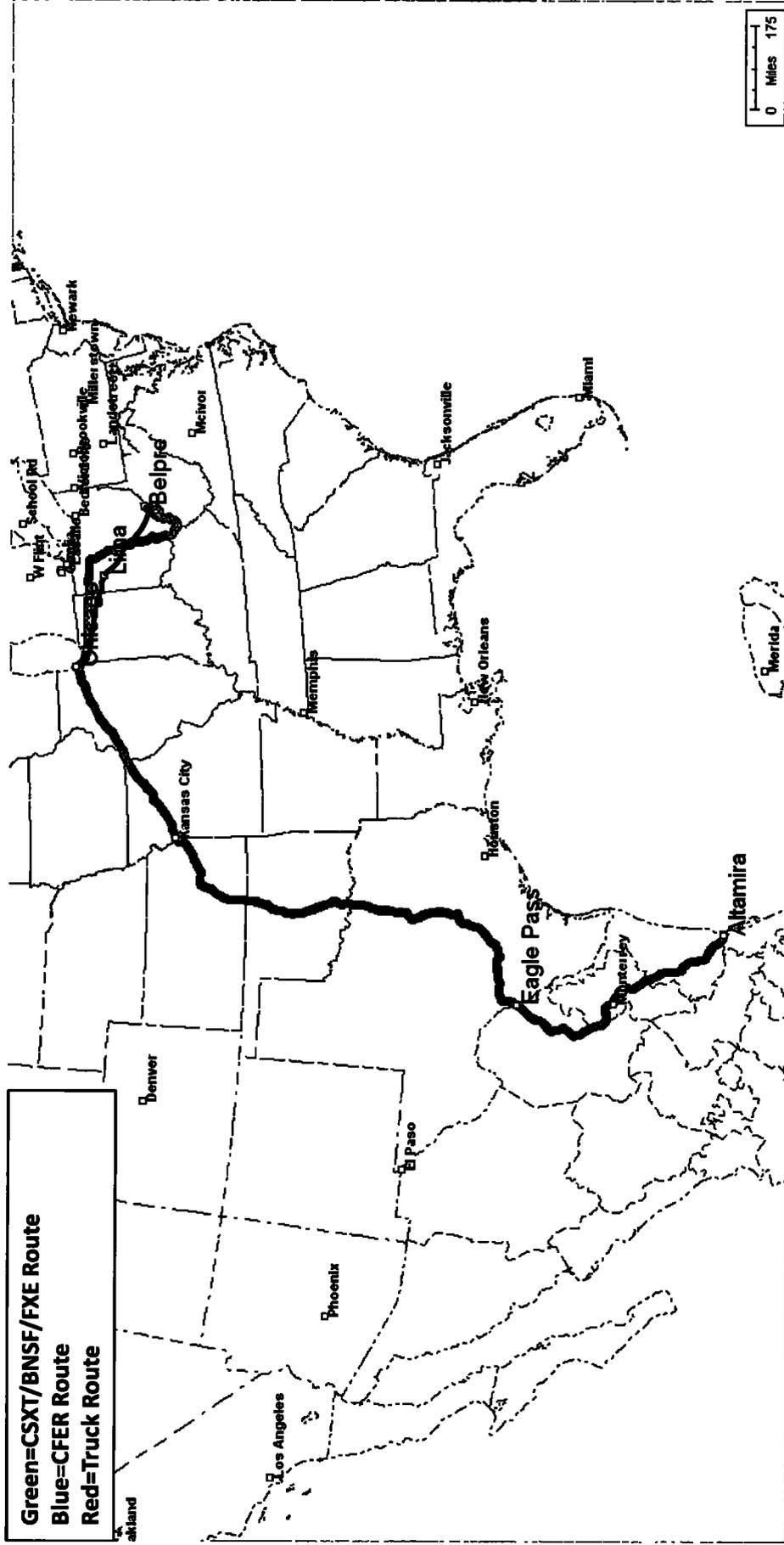
**Cost of Rail/Truck Alternative to CSXT Portion: { { }**

**M&G Movement Number 2B: Altamira, TM – Belpre, OH**  
**Altamira-FXE-Eagle Pass, TX-BNSF-Chicago, IL-CSXT-Belpre: 2,619 Mi (CSXT Portion: 583 Mi)**

**Rail/Truck Alternative to CSXT Portion:**

CFER Rail: Chicago, IL – Lima, OH (207 Mi)

Truck: Lima, OH – Belpre, OH (204 Mi)



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,741**

**Cost of Rail/Truck Alternative to CSXT Portion: {{ }}**

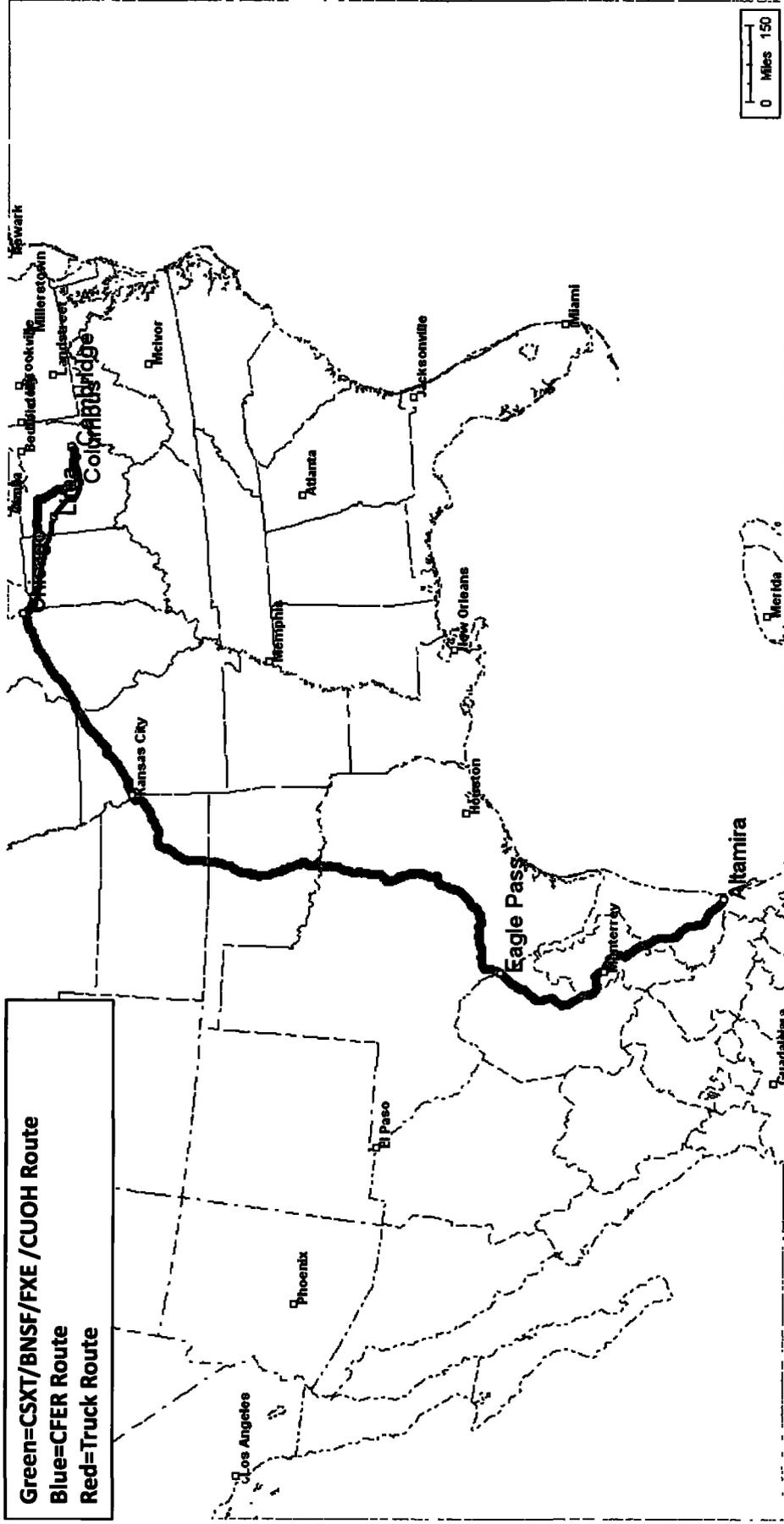
**M&G Movement Number 3B: Altamira, TM – Cambridge, OH**

Altamira-FXE-Eagle Pass, TX-BNSF-Chicago, IL-CSXT-Columbus, OH-CUOH-Cambridge: 2,444 Mi (CSXT Portion: 323 Mi)

**Rail/Truck Alternative to CSXT Portion:**

CFER Rail: Chicago, IL – Lima, OH (207 Mi)

Truck: Lima, OH – Cambridge, OH (172 Mi)



**PUBLIC VERSION**

**CSXT Tariff Rate: \$5,901**

**Cost of Rail/Truck Alternative to CSXT Portion: { { } }**



# EXHIBIT 3

**CONFIDENTIAL EXHIBIT  
REDACTED**

# EXHIBIT 4

CONFIDENTIAL EXHIBIT  
REDACTED

# EXHIBIT 5

**CONFIDENTIAL EXHIBIT  
REDACTED**

# EXHIBIT 6

**HIGHLY CONFIDENTIAL  
EXHIBIT REDACTED**

# EXHIBIT 7

**HIGHLY CONFIDENTIAL  
EXHIBIT REDACTED**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

<b>M &amp; G POLYMERS USA, LLC</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
v.	)	<b>Docket No. NOR 42123</b>
	)	
<b>CSX TRANSPORTATION, INC.</b>	)	
	)	
<b>Defendant.</b>	)	

**OBJECTIONS AND RESPONSES OF M & G POLYMERS USA, LLC  
TO DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSION,  
INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Complainant M & G Polymers USA, LLC ("M&G") hereby submits its objections to the First Set of Requests for Admissions, Interrogatories, and Requests for Production of Documents of CSX Transportation, Inc. ("CSXT"). M&G's investigation of the facts and information that relate to the issues in this case is ongoing and its responses to the Interrogatories and Requests for Production are based upon information presently known. M&G reserves the right to modify and/or supplement any of its responses as the existence of additional responsive information becomes known.

The following General Objections, Objections to Definitions, and Objections to Instructions are incorporated into the specific response and/or objection to each individual Request for Admission, Interrogatory, and Request for Production of Documents.

**GENERAL OBJECTIONS**

1. M&G objects to each Request for Admission, Interrogatory, and Request for Production to the extent that it seeks information protected from disclosure by any applicable

privilege, quasi-privilege, doctrine, or any other protection from discovery or disclosure, including, but not limited to, the attorney-client privilege and the attorney work-product doctrine. Any production of privileged or otherwise-protected information or documents is inadvertent and shall not constitute a waiver of any claim or privilege or other protection. M&G reserves the right to demand that any inadvertently produced privileged information be returned to it and that all copies in CSXT's possession, and that of its counsel, consultants, or other agents, be destroyed.

2. M&G objects to each Request for Admission, Interrogatory, and Request for Production to the extent that it seeks information that is not relevant to the subject matter at issue in this proceeding and/or not reasonably calculated to lead to the discovery of admissible evidence.

3. M&G objects to each Request for Admission, Interrogatory, and Request for Production to the extent that it seeks information that is publicly available, that could more easily be obtained through other sources, or that is within CSXT's own possession, custody, or control.

4. M&G objects to each Request for Admission, Interrogatory, and Request for Production to the extent that it seeks information that is not within the possession, custody, or control of M&G, or otherwise kept by M&G in the ordinary course of business.

5. M&G objects to each Request for Admission, Interrogatory, and Request for Production to the extent that it is overbroad and/or imposes undue burdens that outweigh any probative value the information sought may have in this proceeding.

6. M&G objects to each Request for Admission, Interrogatory, and Request for Production to the extent that it is vague, ambiguous, unintelligible, and/or fails to describe with reasonable particularity the information sought.

7. M&G objects to each Request for Admission, Interrogatory, and Request for Production as overbroad and unduly burdensome to the extent that it seeks information and/or documents in a form that M&G does not maintain in the ordinary course of business, or that are not readily available in the form requested by CSXT, where such information and/or documents could be developed if at all only through a special study that M&G objects to performing.

8. M&G objects to the production of information and documents regarding product, geographic, or indirect competition on the grounds that Interrogatories and Requests for Production or portions thereof regarding the foregoing are unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

9. M&G objects to each Request for Admission, Interrogatory, and Request for Production to the extent it attempts to impose obligations upon M&G beyond those required by 49 CFR Part 1114.

10. M&G objects to each Request for Admission, Interrogatory, and Request for Production to the extent that it requests production of information regarding any transportation of an Issue Commodity in less than bulk quantities as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Packaged goods are not commensurate or similar to bulk goods in transportation characteristics. M&G will only respond as to bulk (i.e., full truckload or full railcar load) shipments.

11. M&G objects to each interrogatory and document request as overbroad and unduly burdensome to the extent that it requests identification and/or production of all documents or facts that provide the source or bases of, or back up for, information sought by a particular interrogatory or document request.

## OBJECTIONS TO DEFINITIONS

1. M&G objects to CSXT's definition of "all" and "any" (in Definition #1), as well as each Request for Admission, Interrogatory, and Request for Production, as overbroad and unduly burdensome to the extent that it requests identification of "all" documents that provide the source or bases of, or back up for, information sought by a particular Interrogatory or Request for Production. M&G also objects on relevance grounds. For each Interrogatory and Request for Production to which M&G is obligated to respond, M&G will produce responsive, non-privileged information or documents that can be located in a reasonable search.

2. M&G objects to CSXT's definition of "document" (in Definition #5) as overly broad and unduly burdensome. M&G further objects to the extent that the definition seeks to impose obligations on M&G that are broader than, or inconsistent with, those imposed by 49 CFR Part 1114. M&G further objects to the inclusion in the definition of "document" of those documents that are privileged or otherwise protected from discovery. This definition also creates ambiguities by giving a meaning that conflicts with the ordinary meaning of terms and phrases.

3. M&G objects to CSXT's definition of "forecast" (in Definition #6) to the extent that it seeks to impose obligations on M&G that are broader than, or inconsistent with, those imposed by 49 CFR Part 1114. M&G also objects to production of "forecasts" that are publicly available or otherwise available to CSXT from other sources. Furthermore, M&G objects to the definition as overbroad and unduly burdensome to the extent that it includes information or analysis that could be developed, if at all, only through a special study that M&G objects to performing, and to the extent it includes documents or information unrelated to the issues in this proceeding. This definition also creates ambiguities by giving a meaning that conflicts with the ordinary meaning of terms and phrases.

4. M&G objects to CSXT's definition of "identify" (in Definition #7) on the basis that it is overbroad and unduly burdensome to the extent that it seeks information or documents that M&G does not maintain in the ordinary course of business, that M&G does not keep in the format requested, or that would require M&G to undertake a special study. M&G also objects to the definition as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requires a person's home address and telephone number and any other personal information. M&G further objects to CSXT's identification demand to the extent that it seeks to impose an obligation to produce documents in a manner not required by 49 C.F.R. Part 1114. M&G objects to the definition with respect to "documents" as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because M&G has no duty to search for, gather, and catalog every document possibly implicated by an Interrogatory with the more than ten pieces of information specified as required by the definition. M&G also objects to the uses of the definition with respect to persons other than natural persons, non-written communications, and acts, occurrences, decisions, statements, reviews, inspections, negotiations, communications, and other conduct as being overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. M&G will respond to any Interrogatory asking it to "identify" particular documents as if it were a request for production of those documents and respond in accordance with 49 CFR § 1114.30. This definition also creates ambiguities by giving a meaning that conflicts with the ordinary meaning of terms and phrases.

5. M&G objects to CSXT's definition of "including" (in Definition #8) as overly broad and unduly burdensome to the extent it creates a potentially limitless field of responsive information or documents in particular discovery requests.

6. M&G objects to CSXT's definition of "Issue Commodity" (in Definition #9) to the extent it includes "any transformation" of PET as irrelevant because the Issue Movements only concern PET.

7. M&G objects to CSXT's definition of "person" (in Definition #14) as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This definition also creates ambiguities by giving a meaning that conflicts with the ordinary meaning of terms and phrases.

8. M&G objects to CSXT's definition of "M&G" (i.e., "M&G") (in Definition #15) because that definition is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. M&G objects to the definition to the extent it includes affiliates, subsidiaries, the parent of M&G, or other entities that do not produce, or arrange for transportation of, the Issue Commodity in the United States. M&G also objects to the extent that the definition includes business entities (and individuals acting on behalf of those entities) that do not tender or receive and have not tendered or received the Issue Commodity in bulk (*i.e.* truckload, carload) quantities. M&G further objects, as overly broad, to the inclusion of "present or former controlling shareholders, officers, directors, agents, counsel, employees, advisors, consultants, divisions, departments, representatives, subsidiaries and affiliates, or any of them, and all other persons or entities acting (or who have acted) on behalf of any of them." M&G will make reasonable inquiries of those individuals most likely to possess information or documents responsive to each Interrogatory or Request for Production.

9. M&G objects to CSXT's definition of "M&G Facility(ies)" (in Definition #16) as irrelevant, factually incorrect, overbroad, and ambiguous. The only facilities identified in Definition #16 that M&G owns or operates are located at Apple Grove and Altamira. The

Parkersburg “facility” is a CSXT rail yard; the Sweetwater “facility” is a BNSF rail yard; the Spring “facility” is a UP rail yard; the Belpre “facility” is a storage and transload track leased and operated by Bulkmatic; and Rains consists of CSXT track leased by A&R Transport for transloading. Nevertheless, for the purposes of responding to most of CSXT’s discovery requests, M&G will define “M&G Facility(ies)” as the six “facilities” listed in CSXT’s definition because they describe the origin points of the Issue Movements.

10. M&G objects to CSXT’s definition of “relating to” (in Definition #18) as vague, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it encompasses any mention in any document or communication no matter how small. M&G also objects on relevance grounds. M&G will make reasonable inquiries into files where responsive information and documents are most likely to be found.

### **OBJECTIONS TO INSTRUCTIONS**

1. M&G objects to Instruction #2 as overly broad and unduly burdensome. M&G will conduct a reasonable search for requested, responsive, non-privileged information and documents. M&G objects to CSXT’s expectation that M&G will seek all information or documents “available or accessible” to M&G to the extent that information or documents are equally accessible to CSXT, or publicly available. Additionally, M&G is not obligated to provide responses based on information or documents in the possession, custody, control of, or “available to”, the long list of entities and persons included in Instruction #2 or “other third parties.”

2. M&G objects to Instruction #2, 12, 21, 30, and any others to the extent that response would require M&G to conduct a special study or analysis that does not already exist.

3. M&G objects to Instruction #3 as overbroad and unduly burdensome to the extent that it requires M&G to conduct special studies or analyses that do not already exist. M&G also objects to Instruction #3 as overbroad, unduly burdensome, and cumulative to the extent it calls for the identification of all persons and documents which contain the information already presented previously in the response.

4. M&G objects to Instruction #6, 16-30, and any others to the extent they seek to impose obligations beyond those described in 49 CFR Part 1114.

5. M&G objects to Instruction #8 as irrelevant, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that the instruction requires M&G to provide any information about a document that is not necessary to verify its privileged status. M&G's duties in responding to CSXT's discovery requests are governed by the Board's rules, and CSXT cannot change or expand those duties by propounding "Instructions."

6. M&G objects to Instruction #9 as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, M&G objects because Instruction #9 seeks irrelevant information. M&G will make reasonable efforts to produce information that exists in an electronic format available to CSXT in a readily usable and intelligible format.

7. M&G objects to Instruction #12 as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, M&G objects to the extent that compliance with Instruction #12 would require a special study. Additionally, M&G objects because the Instruction seeks irrelevant information.

8. M&G objects to Instruction #15 as overly broad and unduly burdensome to the extent it requests information and documents "to the present" given that "the present" is continually changing and these responses require a significant amount of time and effort to assemble that would impose a burden upon M&G that far exceeds the probative value of continually updated information. M&G will provide responses through June 30, 2010, which is the month in which M&G filed its Complaint.

9. M&G objects to Instruction #23, #24, and #25 as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, M&G objects because Instruction #23, #24, and #25 seek irrelevant information. M&G also incorporates its objections to Definition #8.

10. M&G objects to Instruction #26 as overly broad and unduly burdensome. M&G will conduct a reasonable search for requested, responsive, non-privileged documents. M&G objects to CSXT's expectation that M&G must produce documents based on "right[s]", "understanding[s]", "[ability] to use, inspect, examine or copy" at some point in the past, as opposed to the present. M&G also incorporates its objections to Definition #8.

11. M&G objects to Instruction #28 as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, M&G objects because Instruction #28 seeks irrelevant information and imposes obligations upon M&G beyond those required by 49 CFR Part 1114.

12. M&G objects to Instruction #30 as overbroad and unduly burdensome to the extent it applies to word processing documents that are identical to any hard copy. M&G also objects to the extent Instruction #30 seeks to impose an obligation to produce documents in a manner not required by 49 CFR Part 1114. M&G will make reasonable efforts to produce

information that exists in an electronic format available to CSXT in a readily usable and intelligible format.

### **REQUESTS FOR ADMISSION**

**Request for Admission 1.** Admit that M&G's PET Plant at Apple Grove, West Virginia is located on (or adjacent to) the Ohio River.

**Response:** M&G objects to the ambiguous and vague use of the phrases "adjacent" and "located on." Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G admits that the plant is located on property that is physically adjacent to the Ohio River. For further response, see M&G's response to Request for Admission 2.

**Request for Admission 2.** Admit that M&G's PET Plant at Apple Grove, West Virginia has the capability to ship and receive PET or other chemical products via water transportation.

**Response:** M&G objects to the ambiguous, vague, and/or irrelevant use of the words "capability" and "other chemical products." In its responses to CSXT's discovery requests, M&G will interpret "capability" to mean the physical ability to ship or receive some quantity of the Issue Commodity. M&G will limit its response to the Issue Commodity. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G denies the Request. There are no loading or unloading facilities for transportation of PET by water at the Apple Grove facility. There are no pipelines or cranes for loading or unloading, nor is there a conveyor system or storage silos. While M&G's property extends to the Ohio River, the facility itself is not on the water. To M&G's knowledge, PET is not shipped via barge except in containers or on railcars. Moreover, M&G's

customers are generally not located on navigable waterways and/or do not have the ability or willingness to accept water-borne shipments. There is an Ohio River dock on the M&G property for deliveries of liquids, such as barge deliveries of ethylene glycol (also known as monoethylene glycol, or MEG). The dock facility cannot be used for outgoing water shipments of PET, which is a solid, absent a significant investment in capital to build the necessary infrastructure at Apple Grove and at potential water destination points.

**Request for Admission 3.** Admit that M&G's facility at Belpre, Ohio is located on (or adjacent to) the Ohio River.

**Response:** M&G objects to the ambiguous and vague use of the phrases "adjacent" and "located on." Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G denies the Request. The "facility" is not owned or operated by M&G. It is leased by Bulkmatic from Ineos Nova or a successor entity. The rail yard portion, where several Issue Movements originate or terminate, is located across a public road from the Ohio River. M&G does not know the exact extent of Bulkmatic's lease, nor does M&G know who owns the property that fronts on the Ohio River.

**Request for Admission 4.** Admit that M&G's facility at Belpre, Ohio has the capability to ship and receive PET or other chemical products via water transportation.

**Response:** M&G objects to the ambiguous, vague, and/or irrelevant use of the words "capability" and "other chemical products." Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G denies the Request. There is no infrastructure for loading or unloading PET from or to water

transportation at Belpre. See the response to Request for Admission 2 for further information on infrastructure requirements. Additionally, see the reasons stated above in response to Request for Admission 3.

**Request for Admission 5.** Admit that M&G's facility at Parkersburg, West Virginia is located on (or adjacent to) the Ohio River.

**Response:** M&G objects to the ambiguous and vague use of the phrases "adjacent" and "located on." Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G does not know if the "facility" at Parkersburg is located on or adjacent to the Ohio River. The "facility" is a rail yard owned and operated by CSXT. Therefore, CSXT should know the extent of its own property interest in the "facility" and whether such property interest includes river frontage.

**Request for Admission 6.** Admit that M&G's facility at Parkersburg, West Virginia has the capability to ship and receive PET or other chemical products via water transportation.

**Response:** M&G objects to the ambiguous, vague, and/or irrelevant use of the words: "capability" and "other chemical products." M&G can neither admit nor deny the Request for the reasons stated in response to Request for Admission 5. Upon information and belief, there is no infrastructure for loading or unloading PET from or to water transportation at the Parkersburg rail yard. As the owner of this property, CSXT itself should have further information on this topic.

**Request for Admission 7.** Admit that PET can be transported by truck.

**Response:** M&G objects to the Request as ambiguous in its use of the word “can”, as this word could refer to physical, legal, economic, or other capability. M&G will interpret the word to refer to physical capability. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G responds that most any commodity can physically be transported by truck. Therefore, M&G admits this Request.

**Request for Admission 8:** Admit that PET can be transported by barge or other waterborne vessel.

**Response:** M&G objects to the Request as ambiguous in its use of the word “can”, as this word could refer to physical, legal, economic, or other capability. M&G will interpret the word to refer to physical capability. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G responds that virtually all commodities can physically be transported by barge or “other waterborne vessel.” To M&G’s knowledge, PET is not transported via water except in railcars or in containers. Therefore, M&G admits this Request to the extent it refers to roll-on/roll-off service or container transport.

### **INTERROGATORIES**

**Interrogatory 1.** If your response to Request for Admission No. 1 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

**Response:** M&G objects that the reference to “all facts” and “all documents” is overly broad and unduly burdensome to the extent it requires M&G to unearth every conceivable fact and document that may support its position, including facts or documents that M&G itself has not yet identified. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G repeats the objections and explanation in its response to the relevant Request for Admission.

**Interrogatory 2.** If your response to Request for Admission No. 2 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

**Response:** M&G repeats its response to Interrogatory #1.

**Interrogatory 3.** If your response to Request for Admission No. 3 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

**Response:** M&G repeats its response to Interrogatory #1.

**Interrogatory 4.** If your response to Request for Admission No. 4 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

**Response:** M&G repeats its response to Interrogatory #1.

**Interrogatory 5.** If your response to Request for Admission No. 5 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

**Response:** M&G repeats its response to Interrogatory #1.

**Interrogatory 6.** If your response to Request for Admission No. 6 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

**Response:** M&G repeats its response to Interrogatory #1.

**Interrogatory 7.** If your response to Request for Admission No.7 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

**Response:** M&G repeats its response to Interrogatory #1.

**Interrogatory 8.** If your response to Request for Admission No. 8 was anything other than an unqualified admission, please explain in detail the basis for your response, provide all facts you relied on for your response, and identify all documents that support your response.

**Response:** M&G repeats its response to Interrogatory #1.

**Interrogatory 9.** Identify all facts that support your allegation in Paragraph 14 of the Complaint that “CSXT possess[es] market dominance” with respect to the Issue Movements.

**Response:** M&G objects to this Interrogatory as a premature demand for M&G to disclose its litigation position before the submission of opening evidence. M&G further objects to the reference to “all facts” as overly broad and unduly burdensome to the extent it requires M&G to unearth every conceivable fact that may support its position, including facts that M&G itself has not yet identified. M&G also objects to this request to the extent that a response would violate the work product doctrine.

Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers CSXT to the attached Highly Confidential Exhibit 1.

**Interrogatory 10.** Identify all facts that support your allegation in Paragraph 16 of the Complaint that “[t]here is a lack of effective competition from other rail carriers for each of the movements in Exhibits A and B.”

**Response:** M&G objects to this Interrogatory as a premature demand for M&G to disclose its litigation position before the submission of opening evidence. M&G further objects to the reference to “all facts” as overly broad and unduly burdensome to the extent it requires M&G to unearth every conceivable fact that may support its position, including facts that M&G itself has not yet identified. M&G also objects to this request to the extent that response would violate the work product doctrine.

Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G responds that the Complaint contains the facts that support it. For each of the movements in Exhibits A and B, CSXT is the sole carrier that serves the Issue Origin and/or Issue Destination, or is a necessary carrier to any Issue

Movement. There cannot be competition from another rail carrier when no other rail carriers are physically able to provide rail service between a specified origin and destination. Additionally, M&G refers CSXT to its responses to the Requests for Admission, Interrogatories, and Requests for Production herein.

**Interrogatory 11.** Identify all facts that support your allegation in Paragraph 16 of the Complaint that “[t]here is a lack of effective competition from non-rail modes for each of the movements in Exhibits A and B.”

**Response:** M&G objects to this Interrogatory as a premature demand for M&G to disclose its litigation position before the submission of opening evidence. M&G further objects to the reference to “all facts” as overly broad and unduly burdensome to the extent it requires M&G to unearth every conceivable fact that may support its position, including facts that M&G itself has not yet identified. M&G also objects to this request to the extent that response would violate the work product doctrine. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers CSXT to its responses to the Requests for Admission, Interrogatories, and Requests for Production herein.

**Interrogatory 12.** Identify and describe with specificity all Alternative Transportation that M&G has considered, studied, analyzed, or is aware of, which it might use to transport the Issue Commodity between the Issue Origins and the Issue Destinations (including intermodal or multimodal transportation, and including options that would or could require the construction of additional infrastructure or facilities such as truck transloading facilities or barge docks), and identify and describe with specificity any document(s) and/or communication(s) relating thereto.

**Response:** M&G objects to the Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work product doctrine, or is otherwise protected from production. M&G further objects to the ambiguous, vague, overly broad, and unduly burdensome use of the phrases “considered”, “is aware of”, and “might use.”

Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G has only considered the use of trucks as an alternative to CSXT to transport the Issue Commodity between the Issue Origins and Destinations. Although M&G is aware of the possibility of using barges in intermodal service, it has never considered barge to be a viable alternative that would warrant serious evaluation. M&G will further respond, as permitted by 49 C.F.R. § 1114.26, by producing documents that demonstrate when and where M&G has used Alternative Transportation to transport the Issue Commodity between the Issue Origins and the Issue Destinations, as well as documents regarding M&G’s consideration and evaluation of such Alternative Transportation options.

**Interrogatory 13.** Identify and describe with specificity all transportation options, modes, and alternatives other than (or in addition to) CSXT rail service that M&G has used, considered, analyzed, studied, reviewed, evaluated, or is aware of, to transport the Issue Commodity between any origins, destinations, and/or intermediate points (including, without limitation, transportation options and alternatives used or considered for movement(s) of the Issue Commodity originating or terminating at M&G Facilities or facilities owned, leased, or operated – in whole or in part – by M&G or related business entities in South America, Europe or Asia).

**Response:** M&G objects to the ambiguous, vague, overly broad, and unduly burdensome use of the phrases “considered” and “is aware of.” M&G further objects to the Interrogatory on

relevance grounds to the extent it is not limited to the transportation of the Issue Commodity in the United States, or transportation of the Issue Commodity from Altamira to the United States, because such information is not reasonably calculated to lead to the discovery of admissible evidence. M&G expressly objects to the inclusion of transportation originating or terminating from "M&G or related business entities in South America, Europe or Asia" as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Transportation on the three named continents has no relationship to the reasonableness of the CSXT rates challenged in this case or CSXT's market dominance over the Issue Movements. Furthermore, M&G objects to the Interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work product doctrine, or is otherwise protected from production.

Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records pursuant to 49 CFR § 1114.26 that demonstrate when and where M&G has used Alternative Transportation to transport the Issue Commodity between origins and destinations in the United States and documents regarding M&G's consideration and evaluation of Alternative Transportation options. M&G also refers to its responses to Interrogatory #12.

**Interrogatory 14.** Identify all occasions since January 1, 2006 when M&G has used a form of transportation other than rail service to transport the Issue Commodity between any destinations, including: the specific mode or type of transportation; the identity of the person or entity that provided that transportation; the date(s) M&G used such other mode(s) of transportation; the circumstances or reasons surrounding the use of the other mode(s) of transportation; the rate charged to M&G for that alternative transportation, and, if different, M&G's net cost per ton for

that alternative transportation; and whether or not such other mode of transportation is a competitive alternative to CSXT rail service (and if not, state specifically and in detail why not).

**Response:** M&G objects to Interrogatory #14 as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about transportation other than Issue Movements and to the extent it seeks information about transportation prior to Jan. 1, 2008. M&G also objects to the extent the numerous subparts of the Interrogatory would require M&G to undertake a special study, such as the request to provide “circumstances or reasons surrounding the use of the other mode(s)” and “the net cost per ton for that alternative transportation.” Furthermore, M&G objects that several subparts seek information that is unduly burdensome, overly broad, irrelevant, and/or not reasonably calculated to lead to the discovery of admissible evidence. Attempting to answer all subparts of the Interrogatory would subject M&G to a burden that is grossly out of proportion to the value of the information sought. M&G also objects to the vague and ambiguous use of terms such as “circumstances or reasons surrounding.” Furthermore, M&G objects to the phrase “between any destinations” as unclear, ambiguous, and potentially irrelevant, because transportation between destinations is not at issue in this proceeding. M&G assumes that CSXT meant to use the phrase “between any origins and destinations,” and will respond accordingly.

M&G also objects to the term “competitive alternative” as vague and ambiguous. M&G interprets the term to mean “effective competition” as used in 49 USC § 10701(a).

Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records pursuant to 49 CFR § 1114.26(b).

**Interrogatory 15.** Identify and describe with specificity all solicitations, requests for proposals, bids or offers, that M&G has issued, published, solicited or otherwise communicated relating (in whole or in part) to transportation of the Issue Commodity.

**Response:** M&G objects to Interrogatory #15 as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about transportation other than Issue Movements. M&G also objects to the extent the Interrogatory would require M&G to undertake a special study, such as the request to “describe with specificity all solicitations, requests for proposals, bids or offers.” M&G also objects to the extent that the requested information is already in CSXT’s possession. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records pursuant to 49 CFR § 1114.26(b).

**Interrogatory 16.** Identify and describe with specificity all proposals, offers or bids received by or communicated to you relating to Alternative Transportation of all or any part of the Issue Movements (including the rate or price offered or proposed for such transportation and all other material terms of any such offer, proposal or bid).

**Response:** M&G objects to the extent this Interrogatory would require M&G to undertake a special study, such as the request to “describe with specificity” and include “all other material terms.” Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records pursuant to 49 CFR § 1114.26(b).

**Interrogatory 17.** Identify and describe with specificity all studies, analyses, projections, communications, and documents relating to the potential to ship the Issue Commodity by truck, including references to any alleged obstacles to transporting the Issue Commodity by truck.

**Response:** M&G objects because the Interrogatory is cumulative of other discovery requests. M&G also objects to the extent the Interrogatory would require M&G to undertake a special study, such as the request to “describe with specificity.” M&G also objects to the vague and ambiguous phrases “potential” and “alleged obstacles” as subjective terms without any identification of whose opinion is sought. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers to its responses to CSXT’s other Requests for Admissions, Interrogatories, and Requests for Production herein. In addition, M&G will produce business records, pursuant to 49 CFR § 1114.26(b), that evaluate when or whether to transport the Issue Commodity by truck.

**Interrogatory 18.** Identify and describe with specificity all studies, analyses, projections, communications, and documents relating to the potential to ship the Issue Commodity via water transportation, including references to any real, potential, or alleged obstacles to transporting the Issue Commodity by barge, ship, or vessel.

**Response:** M&G objects because the Interrogatory is cumulative of other discovery requests. M&G also objects to the extent the Interrogatory would require M&G to undertake a special study, such as the request to “describe with specificity.” M&G also objects to the vague and ambiguous phrases “potential” and “alleged obstacles” as subjective terms without any identification of whose opinion is sought. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G

refers to its responses to CSXT's other Requests for Admissions, Interrogatories, and Requests for Production herein. In addition, M&G will produce business records, pursuant to 49 CFR § 1114.26(b), that evaluate when or whether to transport the Issue Commodity by barge, ship, or vessel.

**Interrogatory 19.** Identify and describe with specificity all studies, analyses, projections, communications, and documents relating to the potential to ship the Issue Movements by Alternative Transportation, including references to any real, potential, or alleged obstacles to transporting the Issue Movements by Alternative Transportation.

**Response:** M&G objects because the Interrogatory is cumulative of other discovery requests. M&G also objects to the extent the Interrogatory would require M&G to undertake a special study, such as the request to "describe with specificity." M&G also objects to the vague and ambiguous phrases "potential" and "alleged obstacles" as subjective terms without any identification of whose opinion is sought. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers to its responses to CSXT's other Requests for Admissions, Interrogatories, and Requests for Production herein. In addition, M&G will produce business records, pursuant to 49 CFR § 1114.26(b), that evaluate when or whether to transport the Issue Commodity by Alternative Transportation.

**Interrogatory 20.** Identify and describe with specificity all studies, analyses, projections, communications, and documents relating to M&G customers who ultimately receive or originate the Issue Movements, including logistics infrastructure, total demand for the Issue Commodity

(including that received from other suppliers), transportation arrangements for the Issue Commodity, and sourcing for Issue Commodity.

**Response:** M&G objects to Interrogatory #20 as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks "all" requested documents and documents "relating to" M&G customers. Additionally, M&G objects to the extent the Interrogatory seeks information in the possession, custody, or control of third parties. M&G also objects to the extent the Interrogatory would require M&G to undertake a special study, such as the request to "describe with specificity." M&G further objects to the vague and ambiguous phrases "logistics infrastructure", "total demand", "arrangements", and "sourcing." M&G objects to the Interrogatory as irrelevant to the extent it seeks information about "sourcing" and "total demand" because the Board has determined that product and geographic competition are not pertinent to market dominance.

Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers to its responses to CSXT's other Requests for Admissions, Interrogatories, and Requests for Production herein. Additionally, M&G will produce business records, pursuant to 49 CFR § 1114.26(b), concerning the logistics infrastructure of M&G customer facilities and transportation arrangements for the Issue Movements, to the extent M&G possesses such documents.

**Interrogatory 21.** Identify and describe with specificity all studies, analyses, projections, communications, and documents relating to Issue Movements between M&G Facilities, including logistics infrastructure, alternative PET storage and/or handling facilities (including

those operated and/or owned by other companies), transportation arrangements for the Issue Commodity, and sourcing for the Issue Commodity.

**Response:** M&G objects to Interrogatory #21 as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks “all” requested documents and documents “relating to” Issue Movements. Moreover, the Interrogatory is confusing. Additionally, M&G objects to the extent the Interrogatory seeks information in the possession, custody, or control of third parties. M&G also objects to the extent the Interrogatory would require M&G to undertake a special study, such as the request to “describe with specificity.” M&G further objects to the vague and ambiguous phrases “logistics infrastructure”, “arrangements”, and “sourcing.” M&G objects to the Interrogatory as irrelevant to the extent it seeks information about “sourcing” because the Board has determined that product and geographic competition are not pertinent to market dominance. Finally, the Interrogatory is cumulative of other Interrogatories.

Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G responds all Issue Movements “between M&G Facilities,” as defined by CSXT and clarified by M&G herein, fall into two categories. First, Issue Movements from any other M&G Facility to Apple Grove are product returns from customers to M&G for recycling and/or rehandling. Second, Issue Movements from Apple Grove or Altamira to other M&G Facilities are to rail car storage tracks or to transload facilities.

**Interrogatory 22.** Identify and describe with specificity any discussions, negotiations, or other communications between M&G and any rail carrier other than CSXT concerning or related to provision (or potential provision) of transportation service for the Issue Movements, including

without limitation: possible options to “build-in” (or “build out”) a line of a railroad from another carrier’s rail line; or possible use of “trackage” or “haulage” rights or some other arrangement whereby another rail carrier would use CSXT’s rail line(s).

**Response:** M&G objects to Interrogatory #22 as overbroad and irrelevant to the extent it is not limited to communications between M&G and any rail carrier other than CSXT for transportation of the Issue Movements that would be a substitute for CSXT service. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G states that it does not possess responsive information.

**Interrogatory 23.** Identify and describe with specificity all data regarding truck traffic to and from an M&G Facility within the last two years including:

- a) number of trucks;
- b) loaded truck weights;
- c) origins of truck shipments;
- d) commodities, products or freight delivered or shipped; and
- e) any applicable weight, traffic type or volume restrictions or limitations on roads, highways, or streets within a 75-mile radius of an M&G Facility that might be used by trucks moving freight to or from an M&G Facility.

**Response:** M&G objects to Interrogatory #23 as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about transportation of commodities other than the Issue Commodity, and to the extent it seeks “all data regarding truck transportation.” M&G objects to the ambiguous time frame of “the last two years.” Furthermore, M&G objects to subpart (e), which would require a special study, and which seeks information that can be obtained from public sources by CSXT just as easily as by M&G. Subject to and without waiving any of its General Objections,

Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records pursuant to 49 CFR § 1114.26(b).

**Interrogatory 24.** For all Issue Movements that are joint movements involving CSXT and one or more other rail carriers; state whether M&G has contracts or agreements with carriers other than CSXT either for the non-CSXT segment of the movement or for the entire movement, and identify all such contracts or agreements.

**Response:** Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records in response to this Interrogatory pursuant to 49 CFR § 1114.26(b).

**Interrogatory 25.** For each M&G Facility that is an Origin or Destination of an Issue Movement describe the activities in that facility involving the Issue Commodity.

**Response:** M&G objects to the overly broad, unduly burdensome, irrelevant, and vague request to “describe the activities...involving the Issue Commodity.”

Subject to and without waiving any of its General-Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers CSXT to the attached Exhibit 2, which is designated Highly Confidential.

**Interrogatory 26.** Does M&G contend that any of the Issue Rates materially affect the profitability, productivity, output, cost-effectiveness, or economic viability of any M&G Facility? If so, for each such M&G Facility, provide information sufficient to show the financial condition of that M&G Facility for the period from January 2008 to the present, including,

without limitation, gross revenues, net revenues, costs of goods sold, operating expenses, fixed expenses, gross income, net income, historical and expected capital expenditures, labor expenses, projected revenues and costs, relevant market forecasts and projections, and business unit plans and forecasts.

**Response:** M&G objects to this Interrogatory because it seeks information which is irrelevant to the issue of market dominance or to the rate reasonableness standards of the Board as described in the *Coal Rate Guidelines, Nationwide, Ex Parte No. 347 (Sub-No. 1)*, 1 ICC2d 520 (1985), as revised in later ICC and Board decisions. Moreover, the Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory 27.** Do you contend that any of the Issue Rates will or may cause the closure of any M&G Facility, or that one or more of the Issue Rates may or will cause material changes in production at any M&G facility? If so, for each such M&G Facility, provide information sufficient to show the financial condition of that M&G Facility for the period from January 2008 to the present, including, without limitation, gross revenues, net revenues, costs of goods sold, operating expenses, fixed expenses, gross income, net income, historical and expected capital expenditures, labor expenses, projected revenues and costs, relevant market forecasts and projections, and business unit plans and forecasts.

**Response:** M&G objects to the vague phrase "may or will cause material changes in production." In further response, M&G repeats its response to Interrogatory #26.

**Interrogatory 28.** Identify and describe with specificity all contracts for the purchase or sale of the Issue Commodity that are currently in force or scheduled to take effect or expire in the next two years. For each such contract identify:

- a) The parties to the contract;
- b) Date the contract was executed;
- c) Effective date of the contract;
- d) Term of the contract and expiration date;
- e) Any minimum volume requirement;
- f) Any maximum volume limitation;
- g) Price terms;
- h) Options for extension; and
- i) Terms describing whether and under what circumstances M&G or another party may terminate the contract.

**Response:** M&G objects to Interrogatory #28 as overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about any purchase or sale of an Issue Commodity that is unrelated to Issue Movements. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will provide business records pursuant to 49 CFR § 1114.26(b) for Issue Commodity purchases/sales related to Issue Movements.

**Interrogatory 29.** For each Issue Movement, identify and describe with specificity all data regarding monthly deliveries of products used in the process of manufacturing the Issue Commodity to the M&G Facility from which the Issue Movement originated and its Issue Destination, including supply requirements, supply stockpile or inventory quantities, production requirements, and product stockpile or inventory quantities maintained since January 1, 2008.

**Response:** M&G objects to this Interrogatory because it seeks information which is irrelevant to the issue of market dominance or to the rate reasonableness standards of the Board as described in the *Coal Rate Guidelines, Nationwide*, Ex Parte No. 347 (Sub-No. 1), 1 ICC2d 520 (1985), as revised in later ICC and Board decisions. The Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, M&G objects that the Interrogatory is unduly burdensome, overly broad, and grammatically unclear. Attempting to answer the Interrogatory would subject M&G to a burden that is grossly out of proportion to the value of the information sought.

**Interrogatory 30.** Identify and describe with specificity each chemical production unit, plant or facility (referred to herein as "unit") included in or comprising any of the M&G Facilities. For each such unit:

- a) Identify the name and location (city and state) of the unit;
- b) Identify the owner or owners of the unit and, in the case of multiple ownership interests, the nature, type and size of each owner's ownership interest in the unit;
- c) Identify the operator or operators of the unit, if different than the owner(s) of the unit;
- d) Identify the person that arranges or is responsible for arranging the procurement of production inputs and supplies, as well as transportation for the unit, if different than the owner(s) or operator(s) of the unit, and the corporate, contractual or other relationship between such person and the owner(s) and/or operator(s) of the unit;
- e) Identify the date on which construction of the unit was commenced, the date on which construction of the unit was completed, and the date on which the unit was placed into service;
- f) Identify (i) the original expected service life of the unit, and, if different, (ii) the current expected service life of the unit, including the date on which operations at the unit currently are expected or anticipated to end;
- g) Identify any future planned, contemplated or anticipated construction or modification of facilities at the unit that might affect the service life of the

- unit, including the date on which operations at the unit are expected or anticipated to end;
- h) Identify the production and/or storage capacity of the unit, including the date, amount and causes of any change in such capacity since the original construction of the unit;
  - i) Identify any anticipated future change in the production and/or storage capacity of the unit and the date, amount and causes of such change;
  - j) Describe in detail the operations at and organization of the unit;
  - k) Describe in detail how supplies, inputs, and raw or intermediate materials are transported and delivered to the unit;
  - l) Describe in detail all transportation, loading and unloading facilities (including rail, truck and/or handling facilities) for the delivery of supplies to the unit;
  - m) Identify the total net production and/or throughput of the unit during each calendar month from January 1, 2008 to the present;
  - n) Identify the total operation and maintenance expenses of the unit during each calendar month from January 1, 2008 to the present;
  - o) Identify the date, time and duration (in hours) of each scheduled outage or shutdown of the unit during each calendar month from January 1, 2008 to the present;
  - p) Identify the date, time and duration (in hours) of each actual outage or shutdown of the unit during each calendar month from January 1, 2008 to the present; and
  - q) Identify any future planned, contemplated, proposed, announced, or anticipated construction or modification of facilities or processes at the unit (including any unit or facility expansion) that will or might affect the type and/or volume or amount of production, handling, or storage capacity or capability of the unit, and how such construction or modification of facilities would affect the type and/or volume or amount of production, handling, or storage capacity in the unit (including quantification of the effect or potential effect of any such construction or modification).

**Response:** M&G objects to this Interrogatory to the extent it is overly broad, unduly burdensome, cumulative, and seeks irrelevant information. M&G objects to the use of ambiguous words and phrases in the Interrogatory, such as “throughput.” M&G objects to the Interrogatory to the extent it calls for speculation, such as the request for “anticipated”, “expected”, or “contemplated” events. M&G also objects to the extent the Interrogatory would

require M&G to conduct a special study, such as the request to “[d]escribe in detail.” M&G specifically objects to subparts (j), (k), and (n) as irrelevant to the STB’s rate reasonableness standards. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers CSXT to the attached Exhibit 3, which is designated Highly Confidential.

**Interrogatory 31.** Identify and describe in detail M&G’s current policies and procedures for handling and shipment of the Issue Commodity from or to any M&G Facility:

**Response:** M&G objects to the Interrogatory as vague and ambiguous. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will provide business records pursuant to 49 CFR § 1114.26(b).

**Interrogatory 32.** For each M&G Facility, identify competing producers or shippers of the Issue Commodity or goods that are a close substitute for the Issue Commodity (collectively, “Competing Products”), including (1) name and address of the competing producer or shipper; (2) name and location of facility(ies) producing Competing Product; (3) name and description of Competing Product; and (4) the modes of transportation and carrier(s) the competing producer or shipper uses to transport the Competing Products from its facilities to its customers or other destinations.

**Response:** M&G objects to this Interrogatory because it seeks information which is irrelevant to the issue of market dominance or to the rate reasonableness standards of the Board as described in the *Coal Rate Guidelines, Nationwide*, Ex Parte No. 347 (Sub-No. 1), 1 ICC2d

520 (1985), as revised in later ICC and Board decisions. Moreover, the Interrogatory (1) is not reasonably calculated to lead to the discovery of admissible evidence; (2) contains vague terms such as "close substitute"; and (3) seeks information which would be in the possession, custody, or control of third parties. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records pursuant to 49 CFR § 1114.26(b), to the extent they exist and are responsive.

**Interrogatory 33.** For the period from 2000 to the present, identify, and describe with specificity any plans, studies, analysis, review, assessment, evaluation, or other consideration of the siting, construction, operation, or use of a facility to load or unload over-the-road trucks at or near M&G's Apple Grove, WV Facility, for the purpose of transporting (including originating, transferring, or receiving) the Issue Commodity or any other freight or commodity shipped to or from the Apple Grove, WV Facility, or for related purpose(s). If M&G considered or analyzed such a truck loading, unloading, or transloading facility but decided not to use, construct, acquire, or operate such a facility, identify and explain in detail the reasons for that decision.

**Response:** M&G objects because the Interrogatory is cumulative of other discovery requests. M&G also objects to the extent the Interrogatory would require M&G to undertake a special study, such as the request to "describe with specificity." M&G objects to the vague and overly broad use of the phrase "or for related purpose(s)." M&G objects to the Interrogatory as irrelevant to the extent it concerns commodities other than the Issue Commodity. M&G objects to the date range of the Interrogatory; M&G will respond from Jan. 1, 2006 to the present. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records, pursuant

to 49 CFR § 1114.26(b). M&G also refers CSXT to the attached Highly Confidential Exhibit 3, as well as M&G's responses to CSXT's other Requests for Admissions, Interrogatories, and Requests for Production herein.

**Interrogatory 34.** For the period from 2000 to the present, identify, and describe with specificity any plans, studies, analysis, review, assessment, evaluation, discussion, or other consideration or implementation of the siting, development, construction, operation, or use of a facility or site to transload, load, or unload over-the-road trucks at or near rail lines owned or operated by Norfolk Southern Railway Company or by any other rail carrier (including without limitation any NS rail lines or facilities within 150 miles of M&G's Apple Grove Facility), for purposes of transporting the Issue Commodity or other freight or commodity to or from M&G's Apple Grove, WV Facility, including any portion or segment of such transportation. Please include in your description any conclusions reached by M&G or others concerning the use or potential use or construction of a truck loading, unloading, or transloading facility, including any assessment of the feasibility of construction, development or use of such a facility for transportation of PET or other commodities to or from M&G's Apple Grove, WV Facility.

**Response:** M&G objects because the Interrogatory is cumulative of other discovery requests. M&G also objects to the extent the Interrogatory would require M&G to undertake a special study, such as the request to "describe with specificity." M&G objects to the Interrogatory as irrelevant to the extent it concerns commodities other than the Issue Commodity. M&G objects to the date range of the Interrogatory; M&G will respond from Jan. 1, 2006 to the present. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records, pursuant

to 49 CFR § 1114.26(b). M&G also refers CSXT to the attached Highly Confidential Exhibit 3, as well as M&G's responses to CSXT's other Requests for Admissions, Interrogatories, and Requests for Production herein.

**Interrogatory 35.** Identify all Forecasts prepared by or for M&G or in M&G's possession, custody or control during the period from January 1, 2008 to the present relating to the level, volume or rate of change in any of the following:

- a) The expected or anticipated production, handling, or storage capacity of any unit, plant or facility (referred to herein as "unit") included in or comprising any M&G Facility by calendar month, year or other time period;
- b) The expected or anticipated total net production and/or throughput by any M&G Facility, unit or facility, by calendar month, year or other time period;
- c) The expected or anticipated production and/or throughput requirements or commitments of any M&G Facility by calendar month, year or other time period;
- d) The expected or anticipated volume of demand for product produced, handled, or sold by any M&G Facility, by calendar month, year or other time period;
- e) The expected or anticipated volume of sales (in dollars) of product produced, handled, or sold by any M&G Facility, by calendar month, year or other time period;
- f) The location, amount and duration of any production or transportation constraints affecting or potentially affecting the transportation of product(s) produced or handled by any M&G Facility;
- g) The expected or anticipated number of tons or volume of product(s) to be transported by rail by, for or to any M&G Facility, by calendar month, year or other time period;
- h) The expected or anticipated level of railroad rates for the transportation of product(s) produced by any M&G Facility, by calendar month, year or other time period; and
- i) The expected or anticipated level or rate of change in the Rail Cost Adjustment Factor (with or without an adjustment for railroad productivity) published by the Surface Transportation Board ("STB"), or any other measure of the level or rate of change in the costs of providing rail freight transportation services, by calendar month, year or other time period.

**Response:** M&G objects to the Interrogatory as irrelevant to the extent that it seeks forecasts from years prior to 2010, as earlier forecasts represent outdated information. M&G also objects to the extent the Interrogatory would require M&G to undertake a special study. M&G objects to the use of vague terms such as “throughput” and “constraints.” For relevance reasons, M&G will limit its response to the M&G facilities at Apple Grove and Altamira, because all Issue Movements that originate at other “M&G Facilities,” as that term has been defined by CSXT and clarified by M&G herein, consist of Issue Commodity that is produced at Apple Grove or Altamira. M&G objects to the Interrogatory as irrelevant to the extent it concerns commodities other than the Issue Commodity.

Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G responds that it does not routinely prepare forecasts, and not at the level of detail described by Interrogatory #35. To the extent M&G has responsive information, it will produce business records, pursuant to 49 CFR § 1114.26(b), for subparts (a) – (d) and (f). M&G does not possess any information that is responsive to subparts (e) and (g) – (i).

**Interrogatory 36.** For each Forecast identified in response to Interrogatory 35, identify and describe in detail the methodology used to develop or prepare the Forecast including all assumptions utilized in preparing or developing such Forecast; all data and information used or relied upon to develop or prepare such Forecast, and the sources of all such data or information.

**Response:** M&G objects to the Interrogatory to the extent response would require creation of a special study, such as the request to “describe in detail.” Subject to and without waiving any of

its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers to the attached Exhibit 3, which is designated Highly Confidential.

**Interrogatory 37.** State whether M&G has conducted, caused to be conducted, or has access to any studies, reports or other documents analyzing the costs of utilizing privately owned or leased rail cars for any Issue Movement or the costs of maintaining privately owned or leased rail cars for movement of any product encompassed in the Issue Movements. If the answer to this Interrogatory is affirmative, identify and describe in detail the scope of each such study, report, analysis, or other document, the methodology utilized therein and the specific results and conclusions of each such study, report, analysis, or document.

**Response:** M&G objects to the Interrogatory as overly broad and unduly burdensome in that it asks M&G to “describe in detail” the “scope”, “methodology”, and “specific results and conclusions” of the requested documents. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will provide business records pursuant to 49 CFR § 1114.26(b).

**Interrogatory 38.** For each rail car owned or leased by M&G, and for each of the calendar years 2008 to the present, identify the following:

- a) The owner or lessee of the car;
- b) The location(s) from which the hoppers or gondolas are assigned;
- c) Car initial and number;
- d) Source of car;
- e) Car model or type;
- f) Tare weight;
- g) Date of purchase or lease;

- h) Original cost plus additions and betterments;
- i) Description of financing vehicle (e.g., equipment trust);
- j) Debt rate as a percent;
- k) Finance terms (in years);
- l) Annual depreciation;
- m) Accrued depreciation;
- n) If leased, whether capital or operating lease;
- o) If capital lease, the capitalized value of the lease by car or car group. If group of cars, identify the number (by initial and number) and aggregate dollars;
- p) If an operating lease, the quarterly, semi-annual, or annual lease payment by car or car group covering the term of the lease. If a group of cars, identify the number (by initial and number) and aggregate dollars;
- q) The movement history of each car, including location, miles traveled between stations (loaded and empty), and the time and date of arrival at each station; and
- r) The history (on a year-to-year basis) of mileage allowance payments or other compensation received by M&G (or other owner or lessor) for the use of each car.

**Response:** M&G objects to the Interrogatory to the extent that answering it would require M&G to engage in a special study. M&G specifically objects to subpart (q) as irrelevant, overly broad, and unduly burdensome. M&G also objects to the extent that it does not have the requested information in its possession, custody, or control. For leased railcars, M&G generally does not possess or control the information requested in subparts (k), (o), (q), and (r). Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will provide business records pursuant to 49 CFR § 1114.26(b). For the railcars that M&G owns, business records will include information in subparts (k), (o), (q), and (r), to the extent it exists.

**Interrogatory 39.** For each of the cars identified in response to Interrogatory 38, identify maintenance and/or repair expenses by individual car initial and number (owned and leased), incurred by M&G for each of the calendar years 2008 to the present.

**Response:** M&G objects to the Interrogatory to the extent that answering it would require M&G to engage in a special study. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records pursuant to 49 CFR § 1114.26(b).

**Interrogatory 40.** For each of the cars identified in response to Interrogatory 38, identify the total car unit-miles corresponding to the maintenance and repair expenses identified in Interrogatory 39 (*i.e.*, by individual car initial and number, or car type or car series) for each of the calendar years 2008 to the present.

**Response:** M&G objects to the Interrogatory to the extent that answering it would require M&G to engage in a special study. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G states that it does not have the requested information.

**Interrogatory 41.** Identify the source(s) of all of your responses to these Interrogatories, and identify all persons or entities who participated in the development of your responses, provided responsive information or data, or whom you consulted or relied upon in preparing your responses.

**Response:** M&G objects to the ambiguous term "source(s)." Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific

objections, M&G will identify persons who provided information responsive to the Interrogatories.

### **REQUESTS FOR PRODUCTION**

**Request for Production 1.** Produce all documents, data, or information identified or referenced in your responses to CSXT's Interrogatories, and all documents or other information you reviewed, consulted, considered, or relied upon in developing or preparing those responses.

**Response:** M&G objects to this Request for Production ("RFP") as irrelevant, overly broad, and unduly burdensome to the extent the phrase, "reviewed, consulted, considered" encompasses non-responsive and privileged documents. M&G hereby incorporates in its response each objection from its responses to the individual Interrogatories. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers CSXT to business records produced in response to the Interrogatories, and to other documents produced in response to these RFPs.

**Request for Production 2.** Produce all documents that underlie, support, analyze, explain, relate to, or concern your claim that CSXT possesses "market dominance" with respect to the transportation of the Issue Movements, including the allegations in Paragraphs 13-16 of the Complaint.

**Response:** M&G objects to this RFP as overly broad and unduly burdensome, especially in its request for "all documents that underlie, support, analyze, explain, relate to, or concern" CSXT's market dominance. M&G objects to the extent the RFP encompasses documents which are privileged or otherwise protected from production. M&G also incorporates its objections to

Interrogatories #9-11. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers CSXT to its responses to Interrogatories #9-11, business records produced in response to the Interrogatories, and other documents produced in response to these RFPs.

**Request for Production 3.** For the period from January 1, 2006 to the present, produce all documents relating to transportation options or alternatives for the Issue-Movements, including all documents relating to:

- a) The costs and feasibility of transporting the Issue Commodity, in whole or in part, using Alternative Transportation, including all comparisons of the costs and feasibility of those transportation alternatives with those of CSXT's rail transportation service;
- b) Any correspondence with any potential carriers of Issue Commodity by truck, barge, vessel, ship, pipeline, or other mode of transportation (or combination of modes);
- c) All analyses, studies, or reviews performed by or for you (including analyses conducted by consultants) to identify, analyze, assess or compare Alternative Transportation, including the costs and/or feasibility of any and all such Alternative Transportation.

**Response:** M&G objects to this RFP as overly broad and unduly burdensome, especially in its request for "all documents relating to transportation options or alternatives" to the extent this includes routine correspondence or duplicates documents produced in response to other discovery requests. M&G objects to the RFP as overbroad to the extent it seeks documents prior to Jan. 1, 2008. M&G objects to the extent the RFP encompasses documents which are privileged or otherwise protected from production.

Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce documents in response to subparts (a), (b) and (c) to the extent not otherwise produced. M&G also refers CSXT to

business records produced in response to the Interrogatories, and other documents produced in response to these RFPs.

**Request for Production 4.** For the period from January 1, 2006 to the present, produce all bills, invoices, bills of lading, waybills, or other billing documents issued to, or received by, M&G for transportation of the Issue Movements using Alternative Transportation.

**Response:** M&G objects to the RFP as overly broad and unduly burdensome to the extent it seeks documents prior to Jan. 1, 2008. M&G further objects to producing actual billing documents as overbroad, burdensome, and unnecessarily duplicative of electronic billing data. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce documents to the extent not otherwise produced in response to Interrogatory 14, other Interrogatories, and other RFPs.

**Request for Production 5.** Produce: (i) maps or diagrams showing; and (ii) documents or other information describing or evidencing: any land ownership, access or easement rights or licenses, and other rights to or interests in real property, facilities or improvements held by (or usable by) M&G in the area within a 10-mile radius of the Issue Origins, the Issue Destinations, and the M&G Facilities.

**Response:** M&G objects to the RFP as vague and ambiguous in its use of terms such as “usable by” and “interests in.” In particular, “usable by” is inherently indefinable without clarification of the actual “use” being contemplated. M&G objects as to the Altamira facility because it is not served by CSXT and because it is not in the United States. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to

Instructions, or specific objections, M&G will produce responsive documents for CSXT-served M&G Facilities.

**Request for Production 6.** Produce detailed maps or diagrams showing the facilities at the M&G Facilities, including any storage and handling facility or equipment location(s) and capabilities.

**Response:** M&G objects to the vague and ambiguous use of the term “capabilities.” Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce, or make available for inspection, responsive documents for Altamira and CSXT-served M&G Facilities. An index of large-scale diagrams has been produced; these diagrams will be available for inspection at a mutually agreed time.

**Request for Production 7.** Produce all documents relating to any review, assessment, or analysis of CSXT rail transportation rates that you (including your agents or consultants) conducted or performed, including any comparisons of rates charged or offered by CSXT with rates offered or charged by other transportation providers; analysis of the cost of rail transportation as a proportion of M&G’s overall costs; and all presentations you made to CSXT during the course of transportation contract negotiations between the parties (including all data, information, calculations, and analyses underlying or supporting such documents or presentations).

**Response:** M&G objects to this RFP as overly broad and unduly burdensome to the extent it seeks documents related to transportation other than the Issue Movements, and to the extent that

it seeks "any review, assessment, or analysis." M&G objects to the RFP as overbroad and unduly burdensome to the extent it seeks documents prior to Jan. 1, 2008. M&G objects to the extent the RFP encompasses documents which are privileged or otherwise protected from production. Moreover, M&G objects to the request to produce any "analysis of the cost of rail transportation as a proportion of M&G's overall costs" as irrelevant. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce documents related to the Issue Movements to the extent not otherwise produced in response to other discovery requests. M&G also refers CSXT to business records produced in response to the Interrogatories, and other documents produced in response to these RFPs.

**Request for Production 8.** Produce each study or analysis, and all workpapers and other supporting documents, calculations, and data, prepared by or on behalf of M&G referring to the reasonableness of the rates charged (or proposed to be charged) by CSXT or to the stand-alone costs of service for the transportation of the Issue Movements. For each such study or analysis, produce all underlying workpapers and source documents, including all computer-readable data containing inputs to or the results of such study or analysis.

**Response:** M&G objects to the RFP as overbroad and irrelevant to the extent it seeks documents prior to Jan. 1, 2008. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce documents related to the Issue Movements to the extent not otherwise produced in response to other discovery requests. M&G also refers CSXT to business records produced in response to the Interrogatories, and other documents produced in response to these RFPs.

**Request for Production 9.** Produce any and all rail transportation contracts, agreements, circulars, or other rail pricing arrangements between M&G and rail carriers other than CSXT that (1) are or were in effect at any time from January 1, 2008 to the present; and (2) applied or could apply, whether or not considered by M&G, to all or any part of any interline or joint line movement that involved CSXT and one or more other carriers, including all contracts or other rail rate authorities or pricing documents covering the non-CSXT portion of all Issue Movements identified in Exhibit B to the Complaint.

**Response:** M&G objects to the RFP as vague in its use of the phrase "could apply." M&G objects to the RFP as seeking irrelevant information to the extent it seeks documents that were in effect prior to January 1, 2010 and that do not apply to the Issue Movements. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce the relevant contracts for the Issue Movements in effect on January 1, 2010.

**Request for Production 10.** Produce any and all truck, barge, pipeline, vessel, multimodal, or intermodal transportation contracts, agreements, circulars, or other pricing arrangements between M&G and carriers other than CSXT that (1) are or were in effect at any time from January 1, 2008 to the present; and (2) applied or could apply, whether or not considered by M&G, to all or any part of a movement of an Issue Commodity.

**Response:** M&G objects to the RFP as vague and overbroad in its use of the phrase "could apply." M&G interprets this phrase to mean "actually considered by M&G." M&G objects to the RFP as overly broad and irrelevant to the extent it seeks documents not related to Issue

Movements. M&G objects to the RFP to the extent it encompasses documents in the possession, custody, or control of third parties. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce documents in response to this RFP. M&G also refers CSXT to business records produced in response to the Interrogatories, and to other documents produced in response to these RFPs.

**Request for Production 11.** Produce all documents referring to any sale or acquisition of land (improved or unimproved) or any interest in land (including easements or licenses) completed by M&G in the "SARR States," as defined in M&G's First Requests for Admissions, Interrogatories, and Requests for Production of Documents, during the period from January 1, 2008 to the present including documents showing the location of the parcel, size of the parcel, sale or acquisition price, a description of any improvements to the parcel, date of sale, and any characteristics of the parcel such as land use, utilities, access and topography.

**Response:** M&G objects to the RFP as overly broad, especially in its request for "all documents referring to" the covered sales/acquisitions, and its request for documents showing "any characteristics of the parcel." Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G states that no responsive documents exist.

**Request for Production 12.** Produce all appraisals or other land valuations prepared by or for M&G, or in M&G's possession, custody or control, at any time during the period from January 1, 2008 to the present, for any real property or real estate parcels located in the "SARR

States,” as defined in M&G’s First Requests for Admissions, Interrogatories, and Requests for Production of Documents.

**Response:** M&G objects to the RFP to the extent it seeks documents in the possession, custody, or control of third parties. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce documents showing property tax receipts for the Apple Grove facility for 2008 and 2009 in response to this RFP.

**Request for Production 13.** Produce each Forecast, study or analysis, and all workpapers and other supporting documents and data, prepared by or on behalf of M&G or in M&G’s possession, custody or control during the time period from January 1, 2008 to the present, which refer to, or are related to, the level, volume or rate of change in any of the following:

- a) The expected or anticipated production, handling, or storage capacity of any unit, plant or facility (referred to herein as “unit”) included in or comprising any M&G Facility by calendar month, year or other time period;
- b) The expected or anticipated total net production or throughput by any M&G Facility, unit or facility, by calendar month, year or other time period;
- c) The expected or anticipated production, handling, or storage requirements or commitments of any M&G Facility by calendar month, year or other time period;
- d) The expected or anticipated volume of demand for product produced, handled, or sold by any M&G Facility, by calendar month, year or other time period;
- e) The expected or anticipated volume of sales (in dollars) of product produced, handled, or sold by any M&G Facility, by calendar month, year or other time period;
- f) The location, amount and duration of any production, handling, storage, or transportation constraints affecting or potentially affecting the transportation of product(s) produced or handled by any M&G Facility;
- g) The expected or anticipated number of tons or volume of product(s) to be transported by rail by, for or to any M&G Facility, by calendar month, year or other time period;

- h) The expected or anticipated level of railroad rates for the transportation of product(s) produced or handled by any M&G Facility, by calendar month, year or other time period; and
- i) The expected or anticipated level or rate of change in the Rail Cost Adjustment Factor (with or without an adjustment for railroad productivity) published by the Surface Transportation Board ("STB"), or any other measure of the level or rate of change in the costs of providing rail freight transportation services, by calendar month, year or other time period.

**Response:** Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G repeats its objections and response to Interrogatory #35.

**Request for Production 14.** Produce each Forecast, study or analysis, and all workpapers and other supporting documents and data, prepared by or on behalf of M&G during the time period from January 1, 2008 to the present, which refer to, or are related to, the impact or potential impact of M&G's compliance with applicable state and federal environmental laws, regulations, or requirements (including any requirements or obligations imposed by court order, litigation settlement, or contract) on any of the following:

- a) M&G;
- b) Any M&G Facility;
- c) The volume or amount of Issue Commodity generated, produced, stored, consumed at, or shipped from any M&G Facility;
- d) The relative costs to generate, produce, store, handle, or consume the Issue Commodity at different M&G Facilities;
- e) The relative costs to generate, produce, handle, or store the Issue Commodity at an M&G Facility as compared with the generation, production, handling, or storage costs of manufacturers, producers, or sellers other than M&G; and
- f) M&G's ability or potential ability to compete for present or future sales of Issue Commodity with chemical manufacturers or sellers other than M&G.

**Response:** M&G objects to the RFP as overly broad and unduly burdensome. M&G objects to the extent the RFP is irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence. M&G specifically objects to the RFP as irrelevant to the extent it addresses locations or actions not involved in the Issue Movements. M&G specifically objects to subparts (d) and (e) as being irrelevant to rate reasonableness standards employed by the STB. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G is conducting a reasonable inquiry and will produce responsive documents to the extent they exist for the period from January 1, 2008 through the filing of the complaint.

**Request for Production 15.** Produce each study or analysis, and all workpapers and other supporting documents, calculations, and data, prepared by or on behalf of M&G referring to the total delivered costs of production of the Issue Commodity experienced by M&G and its competitors, and the proportion of the total delivered costs represented by rail or other transportation rates charged (or proposed to be charged) by CSXT and/or carriers. For each such study or analysis, produce all underlying workpapers and source documents, including all computer-readable data containing inputs to or the results of such study or analysis.

**Response:** M&G objects to the RFP because information regarding the “total delivered costs of production” and “the proportion of the total delivered costs represented by rail or other transportation” are irrelevant to both the issue of market dominance and the rate reasonableness standards of the Board as described in the *Coal Rate Guidelines, Nationwide*, Ex Parte No. 347 (Sub-No. 1), 1 ICC2d 520 (1985), as revised in later ICC and Board decisions. The RFP is not

reasonably calculated to lead to the discovery of admissible evidence. M&G also objects to the extent this RFP requests documents prior to 2008.



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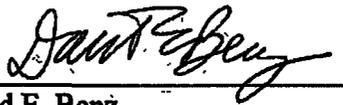
Jeffrey O. Moreno  
David E. Benz  
Thompson Hine LLP  
1920 N Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 331-8800

September 7, 2010

**Certificate of Service**

I hereby certify that on this 7th day of September 2010, a copy of the foregoing Objections and Responses of M & G Polymers USA, LLC to Defendant's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents was served by electronic delivery on:

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

  
\_\_\_\_\_  
David E. Benz

**PUBLIC VERSION**

**HIGHLY CONFIDENTIAL  
INFORMATION REDACTED**



## **GENERAL OBJECTIONS**

M&G repeats the General Objections from its Objections and Responses to CSXT's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents, which were provided to CSXT on September 7, 2010.

## **OBJECTIONS TO DEFINITIONS**

M&G repeats the Objections to Definitions from its Objections and Responses to CSXT's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents, which were provided to CSXT on September 7, 2010:

M&G objects to Definition #23 as overbroad, irrelevant, and unlikely to lead to discovery of admissible evidence to the extent it includes "Track Lease Costs" "for any purpose" not associated with the Issue Movements. This Definition also is ambiguous because not all storage charges involve the leasing of track. M&G has resolved this ambiguity by responding only as to those storage charges expressly identified in the Definition.

## **OBJECTIONS TO INSTRUCTIONS**

M&G repeats the Objections to Instructions from its Objections and Responses to CSXT's First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents, which were provided to CSXT on September 7, 2010.

## **INTERROGATORIES**

**Interrogatory 42.** Please explain in detail the process for loading the Issue Commodity onto trucks at each of the M&G Facilities, including M&G Facilities leased from other parties such as those at Belpre. If the loading process has changed since 2008, please describe the reasons for the change, and the loading procedures before and after the change.

**Response:** M&G objects to this Interrogatory to the extent it is cumulative of prior requests, such as CSXT's Interrogatory Nos. 9, 17, 19, 25, 30, and 31, and RFP No. 2. M&G specifically incorporates its responses to those earlier requests, as well as Exhibits 1-3 attached to M&G's written responses and objections to CSXT's first set of discovery. M&G objects to this Interrogatory as overly burdensome, vague, and ambiguous due to its use of the word "changed" given that any number of trivialities could technically qualify as "change" yet describing each of these aspects "in detail" could take countless pages of text. M&G will interpret the term "changed" to exclude trivialities. M&G also objects to the extent that response would require a special study. M&G also objects to the extent responsive information is held by third parties; many, if not most, of the truck loading actions are completed by third parties such as motor carriers.

Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G incorporates its responses to Interrogatories 43 and 44, and also refers CSXT to the attached Highly Confidential narrative and associated documents in Exhibit 1.

**Interrogatory 43.** Please describe the equipment used for loading the Issue Commodity onto trucks at each of the M&G Facilities. If the loading process has changed since 2008, please describe the reasons for the change, and the loading procedures before and after the change.

**Response:** M&G objects to this Interrogatory to the extent it is cumulative of Interrogatory No. 42. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers CSXT to the attached Highly Confidential narrative in Exhibit 2, and also repeats its response to Interrogatory Nos. 42 and 44.

**Interrogatory 44.** Please identify and describe with specificity all studies, analyses, projections, communications, and documents relating to amounts of time required and/or experienced in loading the Issue Commodity onto trucks at each of the M&G Facilities. If no such studies or analyses exist for a particular M&G Facility, please explain and quantify the amount of time required to load the Issue Commodity at that M&G Facility.

**Response:** M&G objects to the Interrogatory as overly broad and unduly burdensome due to its use of the phrases “with specificity” and “relating to,” which appear to encompass minuscule detail items such as employee time sheets and log books. M&G objects to this Interrogatory to the extent it is cumulative of prior requests, such as Interrogatories 42 and 43; M&G hereby incorporates its prior responses to Interrogatories 42 and 43. M&G also objects to the extent that response would require a special study. M&G further objects because use of the phrase “amount of time” unreasonably assumes that there is no variability in the truck loading process, regardless of circumstances. M&G also objects to the extent responsive information is held by third parties; many, if not most, of the truck loading actions are completed by third parties such as motor carriers. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G responds that no requested studies or analyses exist. In further response, M&G refers CSXT to the attached Highly Confidential narrative in Exhibit 3.

**Interrogatory 45.** Do you, or have you ever, loaded trucks at Belpre or Parkersburg ? If so, please explain the procedures and equipment used for such loading, including the amounts of time required to load trucks at each of these locations.

**Response:** Subject to and without waiving any of its General Objections, Objections to Definitions, or Objections to Instructions, M&G repeats its response to Interrogatory Nos. 42 to 44. In further response, M&G refers CSXT to the attached Highly Confidential narrative in Exhibit 4.

**Interrogatory 46.** Please identify any customer requirements regarding inventory to be held near customer facilities and any customer requirements regarding transloading of the Issue Commodity.

**Response:** M&G objects to the ambiguous and vague use of the term "near." M&G objects to this Interrogatory to the extent it covers non-Issue Movements; M&G's response will be for Issue Movements only. M&G also objects because the Interrogatory is overly simplistic; it ignores situations where a customer may accept truck deliveries as a last resort if exigent circumstances exist but, as a general matter, the customer may have a strong preference for rail deliveries. M&G also objects to the extent that response would require a special study. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G states further response can be found in its other responses to CSXT's discovery requests (such as Interrogatories 9, 33, and 34, among others) and in the attached Highly Confidential Exhibit 4.

**Interrogatory 47.** Please identify and quantify the costs of rail-truck transloading for any M&G shipments of the Issue Commodity that utilized rail-truck transloading from 2008 to present, with itemized detail of all component costs, including without limitation, rail transportation of the Issue Commodity to and from a transloading facility; transloading facility

costs; truck transportation of the Issue Commodity to and from a transloading facility; truck washing costs, if applicable; transloading facility costs; and Labor Costs.

**Response:** M&G objects to this Interrogatory as overbroad, unduly burdensome, and irrelevant to the extent it is not limited to the Issue Movements; M&G's response will be for Issue Movements only. M&G further objects to this Interrogatory to the extent that it is duplicative of Interrogatory Nos. 12-14, 23, and RFP No. 4, and hereby incorporates its objections to those requests. M&G also objects to the extent that the requested information is not maintained by M&G and/or would require a special study (for example, M&G does not separately itemize Labor Costs for transloading). M&G further objects to producing individual invoices for each and every transload shipment. As M&G has done in response to prior Interrogatories, it will produce electronic spreadsheets generated from its internal shipment database that contains the requested information regarding each movement. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records, pursuant to 49 CFR § 1114.26(b).

**Interrogatory 48.** To the extent that you claim that any customer requirements or preferences foreclose your ability to deliver the Issue Commodity to that customer by any particular mode of transportation, please describe those customer requirements or preferences in detail.

**Response:** M&G objects to this Interrogatory as ambiguous and vague due to its use of the term "foreclose," and whether that term is intended as an absolute prohibition or a restriction or limitation. M&G's response is based upon the latter interpretation. M&G further objects to the

extent that the information requested is in the hands of third parties (namely, M&G's customers); thus, M&G does not necessarily know or know "in detail" the reasons why a particular customer requests, prefers, or requires a certain mode of transportation. M&G objects to this Interrogatory as overbroad, unduly burdensome and irrelevant to the extent it covers non-Issue Movements; M&G's response will be for Issue Movements only. M&G objects to this Interrogatory to the extent it is cumulative of prior requests, such as Interrogatory 46. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G repeats its response to Interrogatory 46, and states that a further response is in the attached Highly Confidential Exhibit 4.

**Interrogatory 49.** Do you, or have you ever, used Brokers for any movements of the Issue Commodity; if so, please identify each Broker used and the movements of the Issue Commodity handled by that Broker from 2008 to present.

**Response:** M&G objects to this Interrogatory as overly broad and unduly burdensome because the first portion is unlimited in time. M&G will respond for the period from January 1, 2008 to June 30, 2010. M&G further objects to this Interrogatory to the extent it is not limited to Issue Movements; M&G's response will be for Issue Movements only. M&G objects to the extent that response would require a special study. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G states that its response is in the attached Highly Confidential Exhibit 4.

**Interrogatory 50.** Please identify and quantify per car and aggregate Labor Costs for rail car loading at each M&G Facility from 2008 to present.

**Response:** M&G objects to this Interrogatory because the requested information is not maintained by M&G and response would require a special study. M&G does not separately maintain or track Labor Costs for rail car loading. M&G also objects to the inclusion of its Altamira, Mexico facility within the scope of this Interrogatory.

**Interrogatory 51.** Please identify and quantify Track Lease Costs from 2008 to present.

**Response:** M&G objects to this Interrogatory to the extent that this Interrogatory encompasses Track Lease Costs unrelated to the Issue Movements; M&G will respond for the Issue Movements only. M&G objects to this Interrogatory to the extent that the requested information is not maintained by M&G, or to the extent that response would require a special study. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records, pursuant to 49 CFR § 1114.26(b).

**Interrogatory 52.** Please identify and describe with specificity all studies, analyses, projections, communications, and documents relating to Track Lease Costs, transloading costs, and truck wash costs from 2008 to present.

**Response:** M&G objects to the Interrogatory as overly broad and unduly burdensome due to its use of the phrases "with specificity" and "relating to." M&G objects to this Interrogatory to the extent that the requested information is not maintained by M&G, or to the extent that response would require a special study. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G will produce business records, pursuant to 49 CFR § 1114.26(b).

**Interrogatory 53.** Please identify and describe with specificity all studies, analyses, projections, communications, and documents related to Inventory Carrying Costs for rail transportation of the Issue Commodity from 2008 to present.

**Response:** M&G objects to the Interrogatory as overly broad and unduly burdensome due to its use of the phrases “with specificity” and “relating to.” M&G objects to this Interrogatory to the extent that the requested information is not maintained by M&G, or to the extent that response would require a special study. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers CSXT to the attached Highly Confidential Exhibit 4.

**Interrogatory 54.** Please identify and describe with specificity all construction and/or rehabilitation projects related to rail infrastructure or truck loading infrastructure at M&G Facilities from 2006 to present, including, but not limited to, project start and end dates, project costs, whether and by how much each such project increased transportation capacity at an M&G Facility.

**Response:** M&G objects to the Interrogatory as overly broad and unduly burdensome due to its use of the phrases “with specificity” and “relating to.” M&G objects to this Interrogatory to the extent that the requested information is not maintained by M&G, or to the extent that response would require a special study. Subject to and without waiving any of its General Objections, Objections to Definitions, Objections to Instructions, or specific objections, M&G refers CSXT to the attached Highly Confidential Exhibit 4.



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December 23, 2010

**Certificate of Service**

I hereby certify that on this 23rd day of December 2010, a copy of the foregoing Objections and Responses of M & G Polymers USA, LLC to Defendant's Second Set of Interrogatories was served by hand and by electronic delivery on:

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



David E. Benz

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