

January 31, 2011

via electronic filing

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

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

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding please find the "Third Amended Complaint" of M&G Polymers USA, LLC ("M&G"). This Third Amended Complaint follows the Original Complaint filed by M&G on June 18, 2010, the First Amended Complaint filed by M&G on August 16, 2010, and the Second Amended Complaint filed by M&G on October 18, 2010. The Third Amended Complaint differs from the Second Amended Complaint in the following manner:

1. The South Carolina Central Railroad Company ("SCRF") has been removed as a defendant. M&G has reached a settlement of its differences with SCRF. M&G previously filed a Motion to Dismiss SCRF on January 27, 2011.
2. Lane 12 of Exhibit B. The destination has been changed to Florence, SC to reflect the removal of SCRF. The route, rate, fuel surcharge, rate including fuel surcharge, and R/VC ratio have also been changed to reflect the removal of the SCRF.
3. Lanes 51 and 52 of Exhibit B have been added. These lanes represents significant new business that M&G recently acquired; this business was not known, and could not have been known, by M&G at the time of filing the original Complaint or any of the subsequent amended Complaints. Inclusion of these lanes will not cause prejudice to any party, and it will not require any additional discovery of CSXT. Responses to any discovery requests of CSXT that concern these lanes will shortly be provided by M&G to CSXT.

These changes result in the removal of one defendant, changes to one existing lane, and the addition of two lanes.

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

Sincerely,



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

Enclosure

The Parties

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

2. CSXT is a Class I common and contract carrier by railroad that engages in the transportation of property in interstate and intrastate commerce. Its headquarters are located at 500 Water Street, Jacksonville, Florida 32202. CSXT is subject to the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. §§ 10101 *et seq.*) and to the jurisdiction of the Board.

Description of the Issue Movements

3. In this Third Amended Complaint, M&G challenges the reasonableness of CSXT's rates for the movement of PET between 70 origin and destination pairs set forth in Third Amended Exhibits A and B. Each origin is either an M&G production facility or a storage location.

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

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

The Challenged Rates

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

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

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

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

9. The tariff rates that M&G has been paying for the movements in Third Amended Exhibits A and B since January 1, 2010, currently produce R/VC ratios that range from 247% to 646%. Of the 70 lanes in Third Amended Exhibits A and B, 2 have an R/VC ratio greater than 500%, 35 have R/VC ratios between 400% and 500%, and 25 have R/VC ratios between 300% and 400%.

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

Jurisdictional Allegations

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

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

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

Requested Relief

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

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

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

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

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

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

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

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

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

Respectfully submitted,



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January 31, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 31st day of January 2011 the foregoing Third Amended Complaint has been served upon the following persons via the means described below:

via electronic mail and first class mail to:

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

Counsel for CSX Transportation, Inc.



Jeffrey O. Moreno