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Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. NOR 42187

**VFRC, LLC V. PORTLAND & WESTERN RAILROAD, INC. AND GENESEE &
WYOMING INC.**

**JOINT MOTION TO DISMISS OF PORTLAND & WESTERN RAILROAD, INC. AND
GENESEE & WYOMING INC.**

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Dated: May 28, 2026

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Pursuant to 49 C.F.R. §1111.6, Genesee & Wyoming Inc. (“G&W”) and Portland & Western Railroad, Inc. (“PNWR” or “Railroad”) respectfully submit this joint motion to dismiss asking the Board to: (1) dismiss G&W from this proceeding because G&W is not a rail common carrier and is not subject to the Board’s jurisdiction; (2) dismiss any requests for relief for damages sought by VFRC, LLC (“VFRC”) because VFRC is neither the rail operator of, nor a shipper, using the Bailey Branch extension; and (3) dismiss all remaining allegations and requests for relief sought by VFRC that would be applicable after April 26, 2026, the date on which PNWR lawfully embargoed the rail line at issue.

I. The Complaint and Requested Relief

On May 8, 2026, VFRC, LLC (“VFRC”) filed a Complaint against PNWR and Genesee & Wyoming Inc. (“G&W”), which Complaint stems from PNWR’s failure to reopen a bridge that was destroyed following a flood event. VFRC asks the Board to “find that PNWR failed to provide adequate rail service to VFRC in violation of PNWR’s common carrier obligation under 49 U.S.C. § 11101(a)”. Complaint at 13. VFRC further requests that the Board order Railroad and G&W to “repair the Marys River Bridge and restore service to the Bailey Branch. *Id.* VFRC additionally requested that the Board “award damages to VFRC, including lost profits.” *Id.*

Finally, “VFRC also requests an order requiring PNWR to pay VFRC for their ongoing, unauthorized storage of two locomotives and sixteen freight cars on VFRC’s property.” *Id.*¹

II. Background

PNWR, together with its affiliate Willamette & Pacific Railroad, Inc. (“WPRR”) operate approximately 500 miles of rail lines in Western Oregon.² PNWR and WPRR are wholly owned subsidiaries of G&W. G&W is a non-carrier holding company and does not hold any common carrier authority from the Board.³

The rail line that is the subject of the VFRC Complaint is the Bailey Branch, also known as a segment of the West Side Branch. The Bailey Branch is comprised of two segments totaling less than 6 miles: (a) the segment between MP 688.12 near the Marys River in proximity to Corvallis, OR to MP 687.60 (the “Bailey Branch”) which is owned by Union Pacific Railroad (“UP”) and leased to WPRR⁴, and (b) the “Bailey Branch Extension” between MP 687.60 and MP 682.25, now owned by VFRC⁵ and operated by Albany & Eastern Railroad Company (“AERC”) pursuant to a freight easement.⁶ Railroad’s segment of the Bailey Branch extends 1,500 feet beyond the Marys River Bridge. Railroad and AERC connect approximately 1,500 feet beyond the Marys River Bridge. The remainder of the Bailey Branch beyond MP 682.25

¹ Railroad and G&W are contemporaneously filing a joint answer to the Complaint pursuant to 49 C.F.R. §1111.5.

² In some locations, PNWR performs the rail operations on behalf of WPRR.

³ See *Brookfield Asset Mgmt, Inc. and DJP XX, LLC – Control Exemption – Genesee & Wyoming, Inc. et al.*, STB Docket No. FD 36326 (served Oct. 29, 2019).

⁴ See *Willamette & Pacific Railroad, Inc. – Lease and Operation Exemption – Union Pacific Railroad Company*, Docket No. FD 36827 (STB notice served April 30, 2025).

⁵ *VFRC, LLC – Acquisition Exemption – Union Pacific Railroad Company*, Finance Docket No. 35353 (served March 6, 2012).

⁶ *Albany & Eastern R.R. Co – Acquisition and Operation Exemption – Union Pacific R.R. Co and Willamette & Pacific R.R., Inc.* Finance Docket No. 35355 (served Mar. 10, 2010).

was abandoned by UP and discontinued by WPRR in 2011.⁷ Railroad serves no customers on its segment of the Bailey Branch beyond the bridge.

On January 4, 2025, the Marys River Bridge collapsed as a result of a flooding event on the Marys River. As a result of the collapse, the bridge has been largely removed from the river except for short sections on either side of the river. Railroad has not rebuilt the bridge following its collapse in January 2025. The Railroad estimates it would cost approximately \$4,000,000 to rebuild the bridge as it previously existed, or approximately \$6,500,000 to fully replace and rebuild the bridge as a steel structure.

On April 29, 2026, after analyzing the revenue from shipments that would support the rebuilding of the bridge, Railroad issued an embargo of its segment of the Bailey Branch impacted by the bridge collapse and thereby closed the interchange with AERC. Railroad had not embargoed beyond the bridge before this date because all affected persons were aware of the collapse of the bridge and that rail service would have to be suspended. Following the bridge collapse, Railroad has not received any requests for service over the Bailey Branch. Railroad continues to explore all options for the bridge and related line, including funding for a rebuild or seeking discontinuance authority.

VFRC does not hold Board authority to operate the Bailey Branch Extension, nor has it shipped any commodity with Railroad using the Bailey Branch extension.⁸ VFRC states that it

⁷ See *Union Pacific R.R. Co. – Abandonment and Discontinuance of Trackage Rights Exemptions – in Benton County, OR*, Docket No. AB 33 (Sub-No. 257X); *Willamette & Pacific Railroad, Inc. – Discontinuance of Service and Discontinuance of Trackage Rights Exemptions – in Benton County, OR*, Docket No. AB 986 (Sub-No. 1X) (served June 10, 2011).

⁸ As explained in the VFRC 2010 motion to dismiss its acquisition notice of exemption, and in its 2012 letter withdrawing the motion to dismiss, VFRC is an affiliate of Venell Farms, Inc. that was formed to acquire the physical assets of the line (but not to operate the line). At the time, Venell Farms was the only shipper on the line. See *VFRC, LLC – Acquisition Exemption – Union Pacific Railroad Company*, Finance Docket No. 35353, *VFRC Motion to Dismiss* at 3-4,

“engages in agricultural services, shipping their commodities to buyers” in and outside of Oregon.” However, Railroad has no record that VFRC has ever shipped any commodities with it.⁹ The only active shipper to utilize this section of the Bailey Branch is Nutrien AG Solution’s Corvallis location (“Nutrien”). In 2024, Nutrien shipped 87 loaded railcars. Although VFRC has not shipped with Railroad, it states that it “estimates a loss of 157 inbound railcars of fertilizer over the past year.” Complaint at 7.

III. Legal Framework

Under 49 U.S.C. § 11701(b), the “Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action.” The Board will dismiss a complaint when it determines “that there is no basis on which [it] could grant the relief sought.”¹⁰ Where the Board lacks jurisdiction to grant the relief sought, a motion to dismiss should be granted.¹¹

IV. Argument

- A. *The Board should dismiss G&W from this proceeding because it is not subject to the jurisdiction of the Board.*

G&W requests that the Board dismiss all claims in the Complaint against it because G&W is a non-carrier holding company that controls the Railroad but holds no authority to

10 (filed June 30, 2010) and *VFRC Letter Withdrawing Motion to Dismiss* at 1 (filed July 6, 2011). Venell Farms has not shipped any freight by rail since September 22, 2015.

⁹ VFRC is an affiliate of Venell Farms formed to acquire the Bailey Branch Extension. Venell Farms used to be a shipper located on the Bailey Branch Extension; however, the Railroad’s records show that Venell Farms has not been a rail customer since 2015.

¹⁰ *Brampton Enterprises, LLC d/b/a Savannah Re—Load Norfolk Southern Railway Co.* STB Docket No. NOR 42118, slip op. 3, (served Mar. 16, 2011).

¹¹ See *CSX Transp., Inc. – Abandonment Exemption – in Summit County, OH* STB Docket No. AB 55 (Sub-No. 631X) *et al.* slip op. at 6 (served May 12, 2004)(The Board could not order a reinstitution of service on an abandoned line.); See also *CSX Transp., Inc. – Abandonment – between Bloomington and Montezuma, in Parke County, IN*, ICC Docket No. AB 55 (Sub-No. 486) *et al.*, slip op. at 10 (served Sept. 13, 2002). *Consolidated Rail Corp. – Abandonment Exemption – in Erie County, NY*, STB Docket No. AB-167 (Sub-No. 1164X), *et al* slip op. at 10 (served Oct. 7, 1998).

operate as a common carrier – on the Bailey Branch, or elsewhere. Therefore, the Board has no jurisdiction over G&W and further lacks jurisdiction to grant any of the relief that VFRC is requesting with respect to G&W.

WPRR holds the common carrier obligation to operate, and PNWR operates on WPRR's behalf, over the Bailey Branch where the Marys River Bridge collapsed. WPRR, not G&W, is the party that received authority from the Board to enter into a lease with UP to provide service over the Bailey Branch. G&W is a non-carrier holding company and not a rail carrier. Since G&W does not have any common carrier rights or obligation with respect to the Bailey Branch, it is clear, that the Board does not have jurisdiction over G&W to impose the relief requested by VFRC.

G&W's request to be dismissed is consistent with Board precedent where a party files a complaint against a corporate parent. As the Board has said, good cause exists to dismiss a parent where the parent "does not own, operate, or have a possessory interest in the relevant track or elsewhere in the vicinity."¹² Consequently, the Complaint against G&W should be dismissed.

B. The Board should dismiss any VFRC prayer for relief that would award VFRC damages because VFRC is neither a shipper nor an interchange partner on the Bailey Branch.

Railroad respectfully requests that the Board dismiss the prayers for relief that would award damages to VFRC because VFRC is neither a shipper located on, nor an interchange partner with Railroad with respect to, the Bailey Branch. As such VFRC is not eligible to claim damages against Railroad under 49 U.S.C. §11704(b).

¹² *Victor Insulators, Inc. v. Finger Lakes Railway Corp. and Ontario Central Railroad Corp.*, STB Docket No. NOR 42176, *Slip op. at 3-4 (served Nov. 13, 2023)(citing CSX Corp. and CSX Transp., Inc. – Adverse Abandonment Application – Canadian National RY Co. and Grand Trunk Western R.R. Inc. STB Docket No. AB-31 (Sub-No. 38), slip op. at 3 (served Feb. 1, 2002))*.

Despite its assertions otherwise, VFRC never shipped any cars over the Bailey Branch, and its affiliate, Venell Farms has not shipped any cars since September 22, 2015. Further, VFRC has never made a request for service (let alone a reasonable request) as required by 49 U.S.C. §11101(a).¹³ The only cars that were shipped and interchanged with AERC in the years prior to the bridge collapse were cars originated or destined for Nutrien. Because VFRC is not a shipper and is not an operating, connecting rail carrier /interchange partner, it suffered no damages as a result of the Marys River Bridge collapse. As such, the Board should dismiss all VFRC prayers for relief seeking damages.

C. The Board should dismiss VFRC's prayers for relief that would be applicable after April 26, 2026, when Railroad lawfully embargoed the rail line.

Railroad respectfully requests that the Board dismiss all requests for relief sought by VFRC that would be applicable after April 26, 2026, when Railroad lawfully embargoed the Bailey Branch and its interchange with AERC. The embargo formally suspended Railroad's common carrier obligations with respect to the Bailey Branch and the bridge, and along with it, any obligations to operate over or rebuild the bridge while Railroad determines whether there is sufficient revenue from the low traffic volume that used the bridge, to justify the high cost of rebuilding the bridge. Currently, Railroad is exploring its options for rebuilding the bridge, including outside funding or whether it should discontinue the embargoed line. While the embargo is in place, it is clear that VFRC is not entitled to seek an order that Railroad reconstruct the Marys River Bridge, or to seek any claims against the Railroad for damages for

¹³ Given that the cost to rebuild the Marys River Bridge is high (estimated at \$4,000,000 to \$6,500,000), and the amount of traffic that was using the bridge (87 carloads in 2024) is low, Railroad was justified in not rebuilding the bridge.

breach of any common carrier obligations, and accordingly VFRC has no basis to seek relief after April 26th, and all related claims should be dismissed.

V. Conclusion

For the foregoing reasons, Railroad and G&W respectfully request that the Board (1) dismiss G&W as a defendant from the Complaint; (2) dismiss those VFRC prayers for relief against Railroad that would award damages to VFRC for breach of common obligations; and (3) dismiss those prayers for relief against Railroad that would be applicable after April 26, 2026.

Respectfully submitted,



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Dated: May 28, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2026, I caused a copy of the foregoing Joint Motion to Dismiss to be served on the persons listed below by email as indicated.

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