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Office of Chief Counsel
June 29, 2026
Part of
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June 29, 2026

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: VFRC, LLC, *et al.* v. Portland & Western Railroad, Inc. and Genesee & Wyoming Inc.,
STB Docket No. NOR 42187

Dear Chief of Case Administration:

Enclosed for filing in the above captioned proceeding is a motion for protective order filed by Genesee & Wyoming Inc. ("G&W") and Portland & Western Railroad, Inc. ("PNWR"). G&W and PNWR respectfully request expedited consideration of this motion.

Also enclosed for filing is a joint motion to dismiss and an Answer to the VFRC, LLC *et al.* Amended Complaint. G&W and PNWR have included redacted "public" versions of the Motion to Dismiss and Answer for the Board to post in the public docket and "highly confidential" versions for filing under seal subject to the proposed protective order.

If you have any questions related to this filing, please let me know.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

Justin J. Marks
Counsel to Portland & Western Railroad, Inc.
and Genesee & Wyoming Inc.

Enclosure

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. NOR 42187

**VFRC, LLC, VENELL FARMS, INC., AND ALBANY & EASTERN RAILROAD
COMPANY V. PORTLAND & WESTERN RAILROAD, INC.,
GENESEE & WYOMING INC.,
AND UNION PACIFIC RAILROAD COMPANY, INC.**

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

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Wyoming Inc.*

Dated: June 29, 2026

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. NOR 42187

**VFRC, LLC, VENELL FARMS, INC., AND ALBANY & EASTERN RAILROAD
COMPANY V. PORTLAND & WESTERN RAILROAD, INC.,
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**JOINT MOTION OF PORTLAND & WESTERN RAILROAD, INC. AND GENESEE &
WYOMING INC. TO DISMISS AMENDED COMPLAINT**

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 those Complainants prayers for relief against PNWR/WPRR that would award damages to Complainants for breach of common carrier obligations; (3) dismiss all requests for relief alleged by Albany & Eastern Railroad Company (“AERC”) because AERC has contractually agreed to a limitation of liability on the interchange tracks; and (4) dismiss all remaining allegations and requests for relief sought by VFRC, Venell Farms, Inc (“Venell”), and AERC that would be applicable after April 26, 2026, the date on which PNWR lawfully embargoed the rail line at issue.

I. The Amended Complaint and Requested Relief

On May 8, 2026, VFRC, LLC (“VFRC”) filed a Complaint against PNWR and Genesee & Wyoming Inc. (“G&W”), which complaint stemmed from PNWR’s failure to rebuild a bridge that collapsed following a flood event. On May 28, 2026, PNWR and G&W filed an Answer together with a Motion to Dismiss.

On June 8, VFRC responded by filing an Amended Complaint, that added Venell and AERC as Complainants.¹ In addition the Amended Complaint adds Union Pacific Railroad Company (“UP”) as a Defendant.

Complainants ask the Board to “find that Defendants’ actions constitute failures to provide adequate rail service to Complainants in violation of Defendants’ common carrier obligation under 49 U.S.C. § 11101(a)”. Amended Complaint at 15. Complainants further request that the Board order PNWR and G&W to “repair the Marys River Bridge and restore service to the Bailey Branch. *Id.* Complainants additionally request that the Board “award damages to Complainants, including lost profits.” *Id.* Finally, “Complainants also request an order requiring PNWR to pay VFRC/Venell for their alleged ongoing, unauthorized storage of two locomotives and sixteen freight cars on VFRC/Venell’s property.” *Id.* This Motion to Dismiss is filed on behalf of Railroad and G&W although most of the requests for relief are directed at all of the Defendants which also includes UP.²

II. Background

PNWR, together with its affiliate WPRR operate approximately 500 miles of rail lines in Western Oregon.³ 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.⁴

The rail line that is the subject of the Amended Complaint is the Bailey Branch, also known as a segment of the West Side Branch. The Bailey Branch is comprised of two segments

¹ VFRC, Venell and AERC are together referred to as “Complainants.”

² Railroad and G&W are contemporaneously filing a joint answer to the Amended Complaint pursuant to 49 C.F.R. §1111.5.

³ In some locations, PNWR performs the rail operations on behalf of WPRR.

⁴ 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).

totaling less than 6 miles: (a) the segment between MP 688.12 near the Marys River in proximity to Corvallis, OR and MP 687.60 (the “Bailey Branch”) which is owned by UP and leased to WPRR⁵, and (b) the “Bailey Branch Extension” between MP 687.60 and MP 682.25, now owned by VFRC⁶ and operated by AERC pursuant to a freight easement.⁷ The PNWR/WPRR segment of the Bailey Branch extends approximately 1,500 feet beyond the Marys River Bridge where PNWR/WPRR and AERC connect. The remainder of the Bailey Branch beyond MP 682.25 was abandoned by UP and discontinued by WPRR in 2011.⁸ As discussed further below, Railroad uses its 1500-foot segment of the Bailey Branch beyond the bridge solely for interchange with AERC and serves no customers on the segment.

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. Railroad originally estimated that 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. Railroad has recently obtained an outside design/build estimate of approximately \$3,800,000 based on current steel market prices for a new span with new ties and rail.

⁵ See *Willamette & Pacific Railroad, Inc. – Lease and Operation Exemption – Union Pacific Railroad Company*, Docket No. FD 36827 (STB notice served April 30, 2025).

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

⁷ *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).

⁸ 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).

On April 29, 2026, after further analyzing the revenue from shipments that would be needed to support the rebuilding of the bridge and the estimated future revenues that could be expected based on traffic from before the bridge collapse, Railroad issued an embargo of its segment of the Bailey Branch impacted by the bridge collapse and thereby closed the interchange with AERC.⁹ 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 public funding towards 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. In the Amended Complaint, Section I, VFRC states that it “engages in agricultural services, shipping their commodities to buyers both in and outside of Oregon. However, Railroad has no record that VFRC has ever shipped any commodities with it.”¹⁰ The only active shipper to utilize this section of the Bailey Branch and the Bailey Branch Extension in the past 10+ years is Nutrien AG Solution’s Corvallis location (“Nutrien”). In 2024, Nutrien shipped 87 loaded railcars via the Bailey Branch.

⁹ Although not available when the embargo was put in place, the recent outside estimate for replacing the bridge supports the Railroad’s prior analysis.

¹⁰ 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 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, 10 (filed June 30, 2010) and *VFRC Letter Withdrawing Motion to Dismiss* at 1 (filed July 6, 2011). While Venell used to be a shipper located on the Bailey Branch Extension, the Railroad’s records show that Venell has not been a rail customer since 2015.

Complainant Venell, states that “[b]etween 2011-2013, Venell shipped approximately 400 cars of wheat per year in addition to their usual shipments of grass seed and animal feed.” Amended Complaint at 7. Whether this is the case or not, Railroad has no record that Venell has shipped any carloads via Bailey Branch Extension since September 22, 2015. Given the lack of use, there seems to be no basis for Venell’s claim that it “estimates a loss of 157 inbound railcars of fertilizer over the past year” and a consequent loss of approximately \$47,100 in lost revenue. Amended Complaint at 8.

The Amended Complaint also asserts that AERC has suffered damages. AERC is the rail operator of the Bailey Branch Extension south of the Marys River Bridge. Complainants assert that “AERC’s losses have principally come in the form of the lost use of their locomotives, which have been stranded due to the collapse of the bridge.” Amended Complaint at 9. Complainants allege that “AERC is facing costs of approximately \$160,000 to remove the stranded locomotives.”¹¹ *Id.* In addition, Complainants argue that under the “VFRC and AERC’s operating agreement, the two parties split revenue from freight cars. This further represents an additional loss of income which AERC continues to suffer as a result of the collapse of the Marys River Bridge.” *Id.*

On May 25, 2010, AERC and WPRR entered into an interchange agreement (the “Interchange Agreement”) covering use of over track that begins on the north side of the Marys River Bridge at MP 688.2 and extends over the Marys River Bridge to the connection with the Bailey Branch Extension at MP 687.60.¹² Under that Interchange Agreement, AERC agreed to

¹¹ Railroad believes that AERC only has one locomotive “stranded” on the Bailey Branch.

¹² A copy of the AERC / WPRR interchange agreement is included as Exhibit B to the Answer of Portland & Western Railroad, Inc. and Genesee & Wyoming Inc. to Amended Complaint (filed June 29, 2026). “Interchange Tracks” are defined as those in Exhibit A of the Interchange

two provisions that limit Railroad’s liability to AERC for damages related to the condition of the track that includes the Marys River Bridge.

Under Article 7(e),

[REDACTED]

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

Agreement and the “Access Trackage” which includes the tracks extending between MP 687.6 and MP 688.2 (on the north side of the bridge).

it determines “that there is no basis on which [it] could grant the relief sought.”¹³ Where the Board lacks jurisdiction to grant the relief sought, a motion to dismiss should be granted.¹⁴

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 Amended Complaint against it because while G&W is a non-carrier holding company that controls the Railroad (as well as other railroads), G&W holds no authority to 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 the Complainants are requesting with respect to G&W.

WPRR holds the common carrier obligation to operate, and PNWR has operated 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 the Complainants.

¹³ *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).

¹⁴ *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).

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."¹⁵ Consequently, the Amended Complaint against G&W should be dismissed.

B. The Board should dismiss the Complainants' prayers for relief because Complainants fail to state a claim upon which relief can be granted because no Complainant is an active shipper on the Bailey Branch.

Railroad respectfully requests that the Board dismiss the prayers for relief under 49 U.S.C. § 11101(a) that would award damages to Complainants because neither VFRC nor AERC have ever been shippers on the Bailey Branch, and Venell has not been a rail shipper on the Bailey Branch of any commodity since 2015. As such Complainants are not eligible to claim damages against Railroad under 49 U.S.C. § 11101(a).

Despite its assertions otherwise, Complainants VFRC and AERC never shipped any cars over the Bailey Branch. Of the three Complainants, Venell Farms is the only shipper, and it has not shipped any cars since September 22, 2015. Further, no Complainant has made any request for service (let alone a reasonable request) since Venell in 2015, as required by 49 U.S.C.

§11101(a).¹⁶ The only cars that were shipped and interchanged with AERC in the years prior to the bridge collapse were cars originated at or destined for Nutrien. Because Complainants are

¹⁵ *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)).

¹⁶ Given that the cost to rebuild the Marys River Bridge is high (originally estimated by the Railroad at \$4,000,000 to \$6,500,000, and now confirmed by an outside estimate of approximately \$3,800,000), and the amount of traffic that was using the bridge (87 carloads in 2024) is low, Railroad was justified in not rebuilding the bridge.

not shippers, they suffered no damages under 49 U.S.C. §11101(a) as a result of the Marys River Bridge collapse. As such, the Board should dismiss all of Complainants' prayers for relief seeking damages for any alleged Railroad breach of its common carrier obligations.

C. The Board should dismiss the AERC claims because AERC has contractually agreed not to pursue any claims related to interchange tracks that include the tracks over the Marys River Bridge or damages resulting from the bridge collapse due to a force majeure event.

Railroad respectfully requests that the Board dismiss all AERC claims against Railroad because Article 7(e) of the Interchange Agreement [REDACTED] (which as defined in the Interchange Agreement include the Access Trackage that cross the Marys River Bridge). Further, under Article 22 of the Interchange Agreement, AERC has [REDACTED]

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

Railroad respectfully further requests that the Board dismiss all requests for relief sought by Complainants applicable to any time period 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 would be sufficient future revenue from traffic using the bridge based on the low traffic volume that used the bridge before it collapsed, to justify the high cost of rebuilding the bridge. Currently, Railroad is exploring its options for rebuilding the bridge, including looking for available outside funding, or whether it should discontinue the embargoed line. While the

embargo is in place, it is clear that Complainants are not entitled to seek an order that Railroad rebuild the Marys River Bridge, or to seek any claims against the Railroad for damages for breach of any common carrier obligations. Since Complainants have no basis to seek relief after April 26th, 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 Amended Complaint; (2) dismiss those Complainants' prayers for relief against Railroad that would award damages to Complainants for breach of the common carrier obligation under 49 U.S.C. §11101(a); (3) dismiss all requests for relief alleged by AERC because AERC has contractually agreed to a limitation of liability on the interchange tracks; and (4) dismiss those prayers for relief against Railroad that are or would be applicable to any time period after April 26, 2026.

Respectfully submitted,



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Counsel for Portland & Western Railroad, Inc. and Genesee & Wyoming Inc.

Dated: June 29, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June, 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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