

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
July 6, 2026
Part of
Public Record

VFRC, LLC, an Oregon Limited Liability Company, **VENELL FARMS, INC.**, an Oregon Business Corporation, **ALBANY & EASTERN RAILROAD COMPANY**, an Oregon Business Corporation.

v.

PORTLAND & WESTERN RAILROAD, INC., a New York Corporation, **GENESEE & WYOMING, INC.**, a Delaware Corporation, **UNION PACIFIC RAILROAD COMPANY**, a Delaware Corporation.

STB Docket No. NOR 42187

UNION PACIFIC RAILROAD COMPANY’S MOTION TO DISMISS

The Amended Complaint filed by VFRC, LLC (“VFRC”), Venell Farms, Inc., and Albany & Eastern Railroad Company, Inc. (“AERC”) (collectively, “Complainants”) asks the Board to award damages and injunctive relief against multiple Defendants including Union Pacific Railroad Company (“Union Pacific”) for alleged violations of the common carrier obligation arising out of a bridge collapse.

While Union Pacific is named as a Defendant, the Amended Complaint hardly mentions Union Pacific, instead focusing almost exclusively on the alleged actions and inactions of Portland & Western Railroad, Inc. (“PNWR”). This is not surprising, because since 1992 the line at issue has been leased to Willamette &

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Pacific Railroad (“WPRR”), an affiliate of PNWR. The Amended Complaint admits that Union Pacific has leased the line containing the collapsed bridge (in Section VII), and prior STB proceedings leave no doubt that the line at issue is a line that has been and continues to be leased to WPRR.

The only statement in the Amended Complaint that even hints at why Union Pacific was included as a Defendant is an assertion that “the obligation to operate, maintain, and repair the bridge and line lies with PNWR and UP.” Am. Compl. § VII. This assertion is wrong as a matter of law. The affiliated lessee and operator of the line (PNWR/WPRR¹) have the common carrier obligation to operate and maintain the leased line and to provide service on reasonable request. While as the lessor of the line Union Pacific has a residual common carrier obligation that would be implicated were the lease to be terminated, Complainants do not allege that Union Pacific has violated that residual obligation in any way. Nor could they, since all of the acts and omissions that Complainants cite in support of their claim occurred while the lease was in effect (as it remains today). For this reason, the Amended Complaint “does not state reasonable grounds for investigation and action” against Union Pacific and it should be dismissed with prejudice as to Union Pacific. 49 U.S.C. § 11701(b).²

¹ WPRR is the lessee, but WPRR’s affiliate PNWR operates the line on WPRR’s behalf. In the Amended Complaint, Complainants refer to both railroads as “PNWR” (Am. Compl. § VII n.1), and PNWR and Genesee & Wyoming, Inc.’s (“G&W’s”) answer defines PNWR and WPRR together as “Railroad” (PNWR/G&W Answer at 1 n.2). In this motion, Union Pacific will use the term “PNWR/WPRR” to refer to PNWR and WPRR collectively, but WPRR when referring to the lessee in the lease agreement.

² At this time, Union Pacific does not take any position on the arguments raised in the June 29, 2026 Motion to Dismiss filed by Defendants PNWR and G&W, including arguments relating to Complainants’ eligibility for relief, contractual waivers, and the impact of PNWR’s embargo of the line. Union Pacific reserves the right to raise additional arguments for dismissal in the future. *See* 49 C.F.R. § 1111.6 (“A motion to dismiss may be filed at any time during a proceeding.”).

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I. THE “BAILEY BRANCH” LINE IN QUESTION IS LEASED TO AND OPERATED BY PNWR AND WPRR.

For purposes of this motion to dismiss, the Board views the alleged facts in the light most favorable to the complainant,³ but it may take notice of relevant regulatory proceedings for the line in question.⁴

In 1992, Union Pacific’s predecessor Southern Pacific and WPRR entered into an agreement for WPRR to lease and operate approximately 184 miles of rail line in Oregon, which was authorized by notice of exemption.⁵ As relevant here, the leased lines included (1) “the West Side Branch between milepost 738.00 near St. Joseph and milepost 671.58 at the end of the track, near Monroe,” and (2) “the Bailey Branch between milepost 673.21 near Alpine Junction and milepost 680.06 near Dawson.”⁶ Complainants refer to a portion of the West Side Branch from Corvallis to Monroe and the spur to Dawson as “the Bailey Branch.”⁷

Today, all that remains of what Complainants refer to as the Bailey Branch are two continuous line segments totaling less than six miles: (a) the segment between Milepost 688.12 near the Marys River and Milepost 687.60 (the “UP Segment”) and (b) the segment between Milepost 687.60 and Milepost 682.25 (the “VFRC Segment”). The Marys River Bridge was located on the UP Segment of the

³ *Cent. Valley Ag Grinding, Inc. v. Modesto & Empire Traction Co.*, Docket No. NOR 42159, slip op. at 4 (STB served July 25, 2018).

⁴ See, e.g., *Victor Insulators, Inc. v. Finger Lakes Ry.*, Docket No. NOR 42176, at 3 (STB served Nov. 13, 2023) (taking notice of and relying on other STB proceedings to terminate rail service when partially granting motion to dismiss); *San Benito R.R.—Acquisition Exemption—Certain Assets of Union Pac. R.R.*, Docket No. FD 35225, at 6 (STB served June 23, 2011) (taking “official notice” of “public material”).

⁵ *Willamette & Pac. R.R.—Lease & Operation Exemption—S. Pac. Transp. Co.*, Docket No. FD 32245, 1993 WL 48293 (ICC served Feb. 26, 1993).

⁶ *Id.* at *1.

⁷ See Am. Compl. § VII & Ex. 1. For purposes of this motion, Union Pacific will adopt Complainants’ use of the term “Bailey Branch.”

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Bailey Branch prior to its collapse.⁸ Union Pacific abandoned the segment extending beyond Milepost 682.25, including the spur to Dawson, in 2011.⁹

In 2010, Union Pacific sold the VFRC Segment of the Bailey Branch to VFRC, retained a freight easement over the line, and immediately transferred that freight easement to AERC.¹⁰ Although Union Pacific initially retained overhead trackage rights over the VFRC Segment of the Bailey Branch, Union Pacific discontinued those rights upon the abandonment of the portion of the Bailey Branch that extended beyond Milepost 682.25.¹¹ As a result, Union Pacific no longer owns or operates the VFRC Segment of the Bailey Branch.

Union Pacific owns but does not operate the UP Segment of the Bailey Branch. As explained above, Union Pacific's predecessor leased the UP Segment of the Bailey Branch to WPRR.¹² The lease was renewed in 2025.¹³ The original 1992 lease and ninth amendment authorized in 2025 are attached as Exhibits 1 and 2, respectively, for the Board's convenience, and may be considered on this motion to dismiss because it was explicitly referenced in the Amended Complaint.¹⁴

⁸ *Id.* § VII.

⁹ *Union Pac. R.R.—Abandonment & Discontinuance of Trackage Rts. Exemptions—In Benton Cnty., Ore.*, Docket No. AB 33 (Sub-No. 257X) (STB served Sept. 9, 2011).

¹⁰ *VFRC, LLC—Acquisition Exemption—Union Pac. R.R.*, Docket No. FD 35353 (STB served Mar. 10, 2010); *Albany & E. R.R.—Acquisition & Operation Exemption—Union Pac. R.R. & Willamette & Pac. R.R.*, Docket No. FD 35355 (STB served Mar. 10, 2010).

¹¹ *Union Pac. R.R.*, Docket No. AB 33 (257X), at 1–2.

¹² *Willamette & Pac. R.R.—Lease & Operation Exemption—S. Pac. Transp. Co.*, Docket No. FD 32245, 1993 WL 48293 (ICC served Feb. 26, 1993); *see* Am. Compl. § VII (referencing the lease).

¹³ *Willamette & Pac. R.R.—Lease & Operation Exemption Including Interchange Commitment—Union Pac. R.R.*, Docket No. FD 36827 (STB served April 30, 2025).

¹⁴ *See Entergy Ark., Inc. v. Union Pac. R.R., et al.*, Docket No. NOR 42104, at 2 (STB served Dec. 30, 2009) (considering a tariff attached to a defendant's motion to dismiss); *see also Page v. Comey*, 137 F.4th 806, 814 (D.C. Cir. 2025) ("Additionally,

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The lease covers the land, the track, and all support structures including bridges and trestles.¹⁵ The lease granted WPRR exclusive rights to operate common carrier rail freight service over the Bailey Branch.¹⁶ Union Pacific {{ [REDACTED]

[REDACTED] }}¹⁷ Moreover, WPRR is prohibited under the lease from suspending or discontinuing its operation as a common carrier over the UP Segment of the Bailey Branch without seeking authorization from the Board.¹⁸ The lease obligates WPRR to {{ [REDACTED]

[REDACTED] }}¹⁹

II. THE AMENDED COMPLAINT DOES NOT STATE ANY CLAIM AGAINST UNION PACIFIC.

Complainants seek damages and injunctive relief against all Defendants (including Union Pacific) for “failure to provide reasonable rail transportation service to Complainants in violation of Defendants’ common carrier obligations imposed by 49 U.S.C. § 11101(a).”²⁰ In relevant part, 49 U.S.C. § 11101(a) states that “[a] rail carrier providing transportation or service subject to the jurisdiction of

a court may consider those portions of ‘documents upon which the plaintiff’s complaint necessarily relies even if the document is produced not by the plaintiff in the complaint but by the defendant in a motion to dismiss.’” (quoting *Terveer v. Billington*, 34 F. Supp. 3d 100, 110 (D.D.C. 2014)); *He Depu v. Yahoo! Inc.*, 950 F.3d 897, 901 (D.C. Cir. 2020) (“In deciding a motion to dismiss, a court may . . . consider documents ‘attached to or incorporated in the complaint.’” (quoting *EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997))).

¹⁵ Ex. 1 § 1.02.

¹⁶ *Id.* § 3.01.

¹⁷ *Id.*

¹⁸ *Id.* § 3.02.

¹⁹ *Id.* §§ 3.03, 3.04.

²⁰ Am. Compl. at 2.

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the Board under this part shall provide the transportation or service on reasonable request.”

Nothing in the Amended Complaint states any ground for concluding that Union Pacific violated any § 11101(a) duty. As demonstrated above—and as Complainants themselves admit in the Amended Complaint—Union Pacific leased the UP Segment of the Bailey Branch long ago, and the line has been operated by Defendant PNWR and its affiliates for the past 33 years. While that lease has been in effect, Union Pacific has not been “providing transportation or service” to Complainants over the UP Segment of the Bailey Branch and Complainants have not made any “reasonable request” to Union Pacific for service.²¹ On the contrary, pursuant to that lease it is PNWR/WPRR that has {{ [REDACTED] [REDACTED] }}²²

PNWR/WPRR has been providing that common carrier service, and any requests for service on that line have been to PNWR/WPRR. In the same vein, the bridge maintenance that Complainants allege was inadequate occurred while the line was leased to PNWR/WPRR and while PNWR/WPRR was responsible for maintaining the line pursuant to the lease. And the embargo that Complainants claim was unreasonable was put in place by PNWR/WPRR—not Union Pacific.²³ Complainants’ assertions exclusively implicate the alleged conduct of the lessee operators of the UP Segment of the Bailey Branch, not the conduct of Union Pacific.

Complainants’ assertion that Union Pacific possesses “the obligation to operate, maintain, and repair the bridge and line” even though it has been leased to

²¹ See 49 U.S.C. § 11101(a),

²² Ex. 1 § 3.01.

²³ See Am. Compl. Ex. 11.

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WPRR has no support in Board precedent or the lease in question.²⁴ While, as the lessor of the Bailey Branch, Union Pacific has a residual common carrier obligation, that obligation “engages only if the primary freight carrier fails to perform.”²⁵ In other words, if the lease were to terminate for some reason, then Union Pacific would have the common carrier obligation to provide service over the formerly leased line and respond to reasonable requests for service. But while that lease is in effect, Union Pacific as the lessor plainly did not have any responsibility for the quality of common carrier service provided by the lessee on the line.²⁶

In short, PNWR/WPRR has been responsible for providing common carrier operations over the Bailey Branch, pursuant to a lease arrangement that has been in place for 33 years.²⁷ Under that lease Union Pacific has no responsibility—or even ability—to provide common carrier service itself over the Bailey Branch while the lease is in effect. There are therefore no allegations in the Amended Complaint that can sustain a claim that Union Pacific has violated 49 U.S.C. § 11101(a) as to the Bailey Branch.

²⁴ *Id.* § VII.

²⁵ *Mass. Dep’t of Transp.—Acquisition Exemption—Certain Assets of CSX Transp., Inc.*, Docket No. FD 35312, at 11 (STB served May 3, 2010) (defining “residual common carrier obligation [as] . . . one that engages only if the primary rail freight carrier fails to perform”); *see also Wash. State Dep’t of Transp.—Acquisition Exemption—Palouse River & Coulee City R.R.*, Docket No. FD 35024, at 2–3 (STB served May 25, 2007) (“WSDOT will not operate the lines, but will retain the residual common carrier obligation should the operators prove unable to perform.”).

²⁶ Indeed, under the lease authorized by the Interstate Commerce Commission Union Pacific {{

}} Ex. 1 §§ 3.02, 3.03.

²⁷ *Willamette & Pac. R.R.—Lease & Operation Exemption—S. Pac. Transp. Co.*, Docket No. FD 32245, 1993 WL 48293 (ICC served Feb. 26, 1993).

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III. CONCLUSION.

For the above reasons, the Amended Complaint does not state reasonable grounds for investigation and action against Union Pacific, and therefore should be dismissed with prejudice as to Union Pacific.

Respectfully submitted,

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Exhibit 1

Lease Agreement

Highly Confidential – Redacted

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Exhibit 2

Ninth Amendment To Lease Agreement

Highly Confidential – Redacted

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July 2026, I served a copy of Union Pacific Railroad Company's Motion to Dismiss by email on the service list.

/s/ Stephen S. Laudone
Stephen S. Laudone