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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

Complainants,

v.

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

Defendants.

Docket No. NOR 42187

**COMPLAINANTS' REPLY TO
PORTLAND & WESTERN RAILROAD
INC. AND GENESEE & WYOMING INC.'S
JOINT MOTION TO DISMISS**

I. SUMMARY OF REPLY

Pursuant to 49 C.F.R. § 1104.13(a) Complainants hereby submit this Reply to the Surface Transportation Board (the "Board") to Defendants Portland & Western Railroad, Inc. ("PNWR") and Genesee & Wyoming, Inc.'s ("G&W") Joint Motion to Dismiss.

Defendants PNWR and G&W failed to carry their burden in their Joint Motion to Dismiss; therefore, it must be denied by the Board. Complainants have provided multiple bases upon which relief can be granted in this case and given the Board ample reasons to further investigate and act regarding PNWR and G&W's repeated failures to fulfill their statutory obligations.

On information and belief, Nutrien Ag Solutions (“Nutrien”), a major shipper on the Bailey Branch, will also be filing a Complaint against Defendants with the Board shortly.

This Reply is supported by the attached exhibits, the attached Declarations of Larry Venell and Jacob Snodgrass, and the following points and authorities.

II. FACTUAL BACKGROUND

This dispute is centered around the collapse of the Marys River Bridge in Corvallis, Oregon, which is located on the Bailey Branch. The bridge has been owned by Union Pacific Railroad Company (“UP”) since 1996, and before that it was owned by Southern Pacific. In approximately 1992, Southern Pacific contracted with PNWR (formerly Willamette & Pacific Railroad (“WPRR”)) to operate the Bailey Branch, including the Marys River Bridge. This arrangement remains in effect today; therefore, the obligation to operate, maintain, and repair the bridge lies with Defendants PNWR, UP, and G&W.

On May 2, 2022, the Marys River Bridge caught fire and burned for approximately nine hours. The wooden trestles and cross braces of the 75-year-old structure were severely scorched and sustained substantial damage. PNWR assumed responsibility for the repair of the bridge and worked to replace the ties and light rail equipment. They continued to assume responsibility by having their certified bridge inspectors inspect the bridge in 2022, 2023, and 2024.

Less than three years after the fire, on January 4, 2025, the Marys River Bridge collapsed while railcars operated by PNWR travelled across it. This caused approximately 200 tons of urea to be dumped into the Marys River. PNWR immediately assumed responsibility for the bridge collapse by removing the bridge from the river below. Moreover, in November 2025, the Oregon Department of Environmental Quality (“DEQ”) sent PNWR a Notice of Civil Penalty for

unlawfully discharging waste into waters of the state. In their Notice, DEQ noted that they were “concerned about the condition and safety of Portland and Western, Inc.’s railroad crossings over water bodies.”

Despite repeatedly assuming responsibility for the repair, maintenance, cleanup, and civil penalties associated with the Marys River Bridge, PNWR now attempts to evade their responsibility to replace the bridge pursuant to their duties as a common carrier under 49. U.S.C. § 11101(a). The Marys River Bridge constituted the exclusive route through which Complainants and other cargo shippers on the Bailey Branch accessed external markets, and now for over 18 months, access by rail has been impossible for local shippers on the Bailey Branch due to PNWR and G&W’s failures.

To misdirect the Board, PNWR and G&W claim that the collapse was not due to faulty repairs following a 9-hour fire on a 75-year-old structure. Without any support, PNWR claims that the collapse was due to “a flooding event” and “extreme high water.” Yet, the hydrologic data from the National Oceanic and Atmospheric Administration (“NOAA”) stream gauge on the Marys River at Philomath upstream of the bridge does not support this. The only crest noted for this stream gauge in 2025 by NOAA occurred in December of that year, almost 12 months after the bridge collapsed.¹ There are no other high-water crests noted for 2025, completely contradicting PNWR’s claim of “extreme high water” at the time the bridge collapsed.

Over the last 18 months, Complainants’ reasonable requests for service have repeatedly fallen on PNWR’s deaf ears.² Complainants’ businesses have suffered and continue to suffer

¹ See <https://water.noaa.gov/gauges/phio3>.

² Declaration of Larry Venell (hereinafter “Venell Decl.”), at ¶¶ 31-32. Declaration of Jacob Snodgrass (hereinafter “Snodgrass Decl.”), at ¶¶ 15-16.

because of PNWR's failure to discharge its duty as a common carrier.³ PNWR's prolonged inaction is further evidenced by the fact that it did not embargo the line until April 29, 2026—nearly a year and a half after the collapse, and only after ignoring Complainants and other shippers on the line who had repeatedly requested service and information regarding a timeline for repairs.

In their Joint Motion to Dismiss, PNWR and G&W attempt to justify their inexcusable delay by claiming that the decision to embargo came “after further analyzing the revenue of shipments that would be needed to support the rebuilding of the bridge....” This alone is an admission that PNWR and G&W violated 49 U.S.C. § 11101(a), because “[a] railroad may not refuse to provide services merely because to do so would be inconvenient or unprofitable.”⁴

Yet in their Answer, PNWR and G&W provide an entirely different justification: “Railroad issued the embargo...in response to increased threats by VFRC even though all affected parties (Complainants and Nutrien) have been well aware of the bridge collapse and the inability of rail traffic to cross the Marys River to access the interstate network.” In other words, PNWR contends that it was excused from responding to shippers' reasonable requests, fulfilling its duties as a common carrier, and complying with applicable embargo procedures because everyone already knew that rail service had been interrupted. Neither of the inconsistent rationales offered by PNWR or G&W in their pleadings relieve them of their obligation as common carriers to replace the bridge. In fact, they constitute clear admissions of statutory

³ Venell Decl., at ¶¶ 12-14, 17, 26, 27, 28, 29, 33. Snodgrass Decl. at ¶ 17.

⁴ *Decatur Cty. Comm'rs v. Surface Transp. Bd.*, 308 F.3d 710, 715 (7th Cir 2002); *G.S. Roofing Prods. Co. v. Surface Transp. Bd.*, 143 F.3d 387, 391 (8th Cir. 1998).

violations and demonstrate PNWR's continued pattern of neglect toward the Bailey Branch which dates back to the 1990s.⁵

In their Joint Motion to Dismiss, PNWR and G&W gloss over the fact that the bridge collapse has left two PNWR locomotives and sixteen PNWR freight cars stranded on the south side of the Bridge. The two locomotives have been stored on VFRC, LLC's ("VFRC") property without consent or payment of storage costs since January 2025.⁶ Moreover, Albany & Eastern Railroad Company ("AERC") has locomotives which have been stranded on the south side of the bridge since the bridge collapse. Because of this, AERC cannot use them to generate income as the bridge was the sole connection to the interstate rail network.⁷ This demonstrates yet another way in which Defendants' failure to replace the bridge and discharge their duties continue to have detrimental impacts on Complainants with each passing day.

As was described at length in Complainants' Amended Complaint, Defendants' actions with regard to the Marys River Bridge represent a continued pattern of neglect toward the Bailey Branch for over 30 years. In 1996, Complainant Venell Farms, Inc. ("Venell") built a \$2,000,000 bulk loading facility on the Bailey Branch to facilitate further shipments by rail. This came after PNWR had urged shippers on the line, including Venell, to increase their volume. However, in the years that followed, the condition of the track deteriorated due to deferred maintenance and track repairs, which were PNWR's responsibility. PNWR sought emergency aid from the state of Oregon in 2000 and again in 2002 to repair the track; however, the track was never adequately

⁵ In their Amended Complaint, Complainants provided a thorough history of PNWR's pattern of deferred maintenance and neglect of the Bailey Branch in Sections IX and X, some of which is provided again in this Reply. *See also* Venell Decl.

⁶ On April 29, 2026, VFRC sent an invoice to PNWR for 16 months siding and yard rent for the unauthorized storage of the locomotives on VFRC's property. To date, this invoice has not been paid.

⁷ Snodgrass Decl., at ¶ 17.

repaired and remained in dismal condition. PNWR also imposed a shipper paid maintenance charge on local shippers including Venell to cover the costs of maintenance and repair. PNWR attempted to abandon the track in 2007 due to poor track conditions (which was due to their neglect and failure to maintain it). Increasingly frustrated by over a decade of deferred maintenance and a lack of accountability, in 2010, VFRC, a subsidiary of Venell, purchased the section of the Bailey Branch from Milepost 687.60 to 682.25 from UP. AERC is the operator of this section of the line. VFRC's investments in the Bailey Branch immediately resulted in better track conditions and more reliable service on the line, which attracted other shippers, such as Nutrien, to construct a multi-million-dollar shipping facility on the line. Due to the ongoing impacts on Nutrien caused by the bridge's collapse, on information and belief, Nutrien will soon be filing a Complaint with the Board.

Following the collapse of the bridge in 2025, Complainants have once again found themselves in the unfortunate position of facing Defendants' abandonment of their obligations, evasion of their responsibilities, and repeated attempts to shift those duties onto others—a familiar pattern on the Bailey Branch that Complainants know all too well and one that must come to an end. As the following points and authorities clearly demonstrate, PNWR and G&W's Joint Motion to Dismiss must be denied.

III. MOTION TO DISMISS STANDARD

Pursuant to 49 U.S.C § 11701(b), the Board “may dismiss a complaint it determines does not state reasonable grounds for investigation and action.”⁸ However, “the Board may not

⁸ 49 U.S.C § 11701(b).

dismiss a complaint made against a rail carrier providing transportation subject to the jurisdiction of the Board under this part because of the absence of direct damage to the complainant.”⁹

Motions to dismiss are generally disfavored.¹⁰ While reviewing a motion to dismiss, the Board will view the alleged facts in a light most favorable to the complainant.¹¹ A complaint is dismissed under § 11701(b) **only** when the Board finds that there is **no basis** upon which it could grant the relief sought.¹²

IV. POINTS AND AUTHORITIES

A. The Board should not dismiss Complainants’ prayers for relief.

49 U.S.C. § 11704(b) states that “a rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part.”¹³ Further, 49 U.S.C. § 11704(c)(1) states that “[a] person may file complaint with the Board...to enforce liability against a rail carrier providing transportation subject to the jurisdiction of the Board....”¹⁴ 49 U.S.C. § 11101(a) states that “[a] rail carrier providing transportation or service subject to the jurisdiction of the Board...shall provide the transportation or service on reasonable request.”¹⁵

⁹ *Id.*

¹⁰ *Cent. Valley Ag Gridding, Inc. v. Modesto & Empire Traction Co.*, Docket No. NOR 42159, slip op. at 4 (STB served July 25, 2018).

¹¹ *Consumers Energy Co. v. CSX Transp., Inc.*, NOR 42142, slip op. at 1 (STB served June 15, 2015); *Montana v. BNSF Ry.*, NOR 42124, slip op. at 3 (STB served Feb. 16, 2011).

¹² *Grain Land Coop. v. Canadian Pac. Ltd.*, NOR 41687, slip op. at 2-3 (STB served Dec. 8, 1999)(emphasis added).

¹³ 49 U.S.C. § 11704(b) (emphasis added).

¹⁴ 49 U.S.C. § 11704(c)(1) (emphasis added).

¹⁵ 49 U.S.C. § 11101(a).

Despite this clear language, PNWR and G&W attempt to claim that only “shippers” can file such a complaint with the board. Additionally, they claim that these shippers must be “active.” However, neither of these terms can be found in the relevant statutory provisions quoted above, nor is either term defined under STB regulations. In fact, 49 U.S.C. § 11101(a) does not even define what constitutes adequate service on reasonable request.¹⁶ This is because the Board has “been given broad discretion to conduct case-by-case fact-specific inquiries to give meaning to these terms, which are not self-defining, in the wide variety of factual circumstances encountered.”¹⁷ Thus, because all Complainants are “persons” which have been damaged by acts or omissions of carriers under the jurisdiction of the Board, Complainants can claim damages against Defendants in this case.¹⁸

Venell ships commodities along the Bailey Branch. They have done so since 1956. In 1996, Venell built a \$2,000,000 bulk loading facility on the Bailey Branch to facilitate further shipments by rail. Following the collapse of the Marys River Bridge and Defendants’ failure to replace it and restore rail service, Venell’s ability to ship by rail and access the interstate rail network was completely severed, which has damaged and continues to damage Venell. Furthermore, PNWR and G&W’s claim that Venell has not shipped anything since 2015 is inaccurate. Attached hereto as Exhibit 2 is {{ [REDACTED] }} Accordingly, Venell has properly brought its claims for relief before the Board and should not be dismissed.

¹⁶ *Granite State Concrete Co. v. Surface Transp. Bd.*, 417 F3d 85, 92 (1st Cir 2005).

¹⁷ *Id.*

¹⁸ Noting again that the Board may not dismiss a complaint made against a rail carrier providing transportation subject to the jurisdiction of the Board part because of the absence of direct damage to the complainant. *See* 49 U.S.C § 11701(b).

VFRC is a wholly owned subsidiary of Venell and owns the physical assets of the Bailey Branch from Milepost 687.60 to 682.25. VFRC receives compensation for every car interchanged at VFRC's facility (Station ID 400). Attached hereto as Exhibit 3 is {{ [REDACTED] [REDACTED] [REDACTED] [REDACTED] }} Thus, VFRC's claims have been properly brought before the Board pursuant to 49 U.S.C. § 11704(b), 49 U.S.C. § 11704(c)(1), and 49 U.S.C. § 11101(a), and should not be dismissed.

Both Venell and VFRC made reasonable requests for service pursuant to 49 U.S.C. § 11101(a). On April 2, 2026, Larry Venell of Venell Farms, Inc. and VFRC called Scott Boyter, general manager of PNWR, to request service and obtain information on when service was expected to resume.¹⁹ Mr. Venell left a voicemail for Mr. Boyter, who never returned Mr. Venell's call or responded to his request for service.²⁰ Prior to the embargo, counsel for Complainants sent two separate letters to PNWR, one on April 24, 2026, and the other on April 29, 2026, demanding that PNWR resume interchange services with VFRC's trackage.²¹ Therefore, Venell and VFRC made reasonable requests for service pursuant to 49 U.S.C. § 11101(a).

AERC operates the VFRC-owned section of the Bailey Branch. Furthermore, PNWR has contracted directly with AERC since 2010 via an Interchange Agreement, a copy of which is

¹⁹ Venell Decl., at ¶ 31.

²⁰ Venell Decl., at ¶ 31.

²¹ Copies of these letters were attached as Exhibits 7 and 9 to Complainants' Amended Complaint.

attached hereto as Exhibit 1. {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}

The Interchange Tracks remain at FRA Class 1 standards, yet PNWR embargoed the line on April 29, 2026. This is causing AERC to suffer ongoing damages because they are unable to operate on the line despite PNWR being both contractually and statutorily obligated to do so.

AERC has also been damaged due to the lost use of their locomotives, which have been stranded on the south side of the river since the bridge collapsed.²² This has resulted in additional losses of income, and the fact that AERC may need to pay approximately \$160,000 to remove their stranded locomotives. AERC also made reasonable attempts to request service from PNWR and determine when the bridge would be rebuilt.²³ Thus, AERC should not be dismissed from this case.

As the above demonstrates, the Board should not dismiss any of Complainants' prayers for relief against PNWR and G&W for breaches of their common carrier obligations. Relatedly, Nutrien has been an active shipper on the Bailey Branch since they constructed an \$8,000,000 shipping facility on this line in 2018. Upon Information and belief, Nutrien is in the process of preparing a Complaint against the named Defendants as well.

²² Snodgrass Decl., at ¶ 17.

²³ Snodgrass Decl., at ¶¶ 15-16.

B. The Marys River Bridge is not included in “Interchange Tracks” under the Interchange Agreement between AERC and PNWR²⁴.

Defendants claim that Article 7(e) of the Interchange Agreement {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}

AERC and PNWR’s course of performance since 2010 provides further explanation as to the meaning of Interchange Tracks under the Interchange Agreement.²⁵ {{ [REDACTED]

[REDACTED]

[REDACTED] }}

²⁴ {{ [REDACTED] }} However, as was noted in Complainants’ Amended Complaint, WPRR is a closely related sister company to PNWR. Both are operated together under G&W. In 2000, PNWR adopted all the stations of the WPRR, and PNWR incorporates WPRR as part of its operations. For the purposes of this Reply, any reference to PNWR includes and incorporates WPRR.

²⁵ See ORS 72.2020(1).

{{ [REDACTED] }} AERC has never maintained anything north of the Orchard Siding, and PNWR has never requested otherwise.

Furthermore, PNWR has always performed the inspections of the Marys River Bridge {{ [REDACTED] }} This, coupled with PNWR's repair of the bridge following the fire in 2022, their cleanup efforts following the collapse in 2025, and the civil penalty assessed against them by DEQ, clearly demonstrates that PNWR is the party under the agreement that has always been responsible for the bridge.

PNWR will likely argue that under Article 4 of the Interchange Agreement, {{ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] }} For multiple reasons, this argument fails.

{{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

{{ [REDACTED] }
[REDACTED] } } “The threshold to show ambiguity is not high.”²⁶ A contract terms is ambiguous if, “when examined in the context of the contract as a whole and the circumstances of contract formation, it is susceptible to more than one plausible interpretation.”²⁷ A contract provision “is unambiguous only if its meaning is so clear as to preclude doubt by a reasonable person.”²⁸ {{ [REDACTED] }
[REDACTED]
[REDACTED]
[REDACTED] } }

Third, “it is a basic tenet of contract law that ambiguous language in a contract is construed against the drafter of the contract.”²⁹ {{ [REDACTED] }
[REDACTED]
[REDACTED] } }

At this stage, the Board must view the alleged facts in a light most favorable to the Complainants, and the Board may only dismiss when there is finding that there is no basis upon which relief could be granted.³⁰ As the above demonstrates, {{ [REDACTED] }
[REDACTED]
[REDACTED]
[REDACTED] } } Because of this, PNWR and G&W’s Joint Motion to Dismiss AERC must be denied.

²⁶ *Milne v. Milne Constr. Co.*, 207 Or App 382, 388, 142 P3d 475, 478 (2006).

²⁷ *Adair Homes, Inc. v. Dunn Carney Allen Higgins & Tongue, Ltd. Liab. P’ship*, 262 Or App 273, 277, 325 P3d 49, 52 (2014).

²⁸ *PGF Care Center, Inc. v. Wolfe*, 208 Or App 145, 151, 144 P3d 983 (2006) (emphasis added).

²⁹ *Berry v. Lucas*, 210 Or App 334, 339, 150 P3d 424 (2006).

³⁰ *Consumers Energy Co.*, *supra* note 11, at 1; *Grain Land Coop.*, *supra* note 12, at 2-3.

C. {{ [REDACTED] }}
[REDACTED]
[REDACTED] }}

PNWR's reliance on Article 22 of the Interchange Agreement is unfounded. This provision protects PNWR:

{{ [REDACTED] }}
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

PNWR claims that “the high water and flooding that caused the washout and collapse of the Marys River Bridge” was a force majeure event. As an initial matter, there has never been any finding whatsoever that the cause of the collapse was due to high water on the Marys River. Additionally, as was previously pointed out, the NOAA hydrograph does not show any crests on the hydrograph on or around the time the Bridge collapsed. As well, the bridge collapsed while PNWR rail cars loaded with hundreds of tons of urea were crossing it. It did not simply “washout” due to “extreme high water” as PNWR offers. Again the Board must view the alleged facts in a light most favorable to the Complainants.³¹ PNWR has provided nothing more than bare, self-serving assertions as to the reason for the bridge's collapse in an attempt to once again,

³¹ An “act of God” is “a natural occurrence of ‘extraordinary’ and ‘unprecedented proportions’... ‘not foreshadowed by the usual course of nature, and whose magnitude and destructiveness could not have been anticipated or provided against by the exercise of ordinary foresight.’”

Northwestern Mutual Ins. Co. v. Peterson, 280 Or 773, 776-77, 572 P2d 1023 (1977) (quoting *Schweiger v. Solbeck*, 191 Or 454, 464, 230 P2d 195 (1951)).

³² *Consumers Energy Co.*, *supra* note 11, at 1

evade their responsibility as a common carrier. {{ [REDACTED]

}} [REDACTED]

{{ [REDACTED]

}} Here, the structural integrity and safety of the Marys River Bridge was within PNWR's reasonable control. They conducted repairs to some of the equipment on the Bridge following the fire in May 2022; however, these repairs were insufficient to ensure long-term safety for bridge crossings on the line. Even if the water had been elevated in January 2025 around the time the bridge collapsed, Defendants were still negligent in deficiently repairing the bridge. This is analogous to the circumstances involving a force majeure defense raised in *Schweiger v. Solbeck*. The Court stated:

“Even assuming there was a landslide, the negligence of the defendants in permitting an accumulation of logging debris to remain on their land might well have a cause concurring with the landslide in bringing about the injury, in view of the tendency of the soil to slide when saturated with water.”³³

Just as the defendants in *Schweiger* permitted an accumulation of logging debris to remain on their land, PNWR did not adequately repair the bridge following the fire to ensure its reasonable safety. For this reason, and when viewing the facts in the light most favorable to complainants, the Board should deny PNWR's motion to dismiss AERC on the basis of force majeure.

D. {{ [REDACTED]

}} [REDACTED]

{{ [REDACTED]

[REDACTED]

³³ *Schweiger v. Solbeck*, 191 Or 454, 464, 230 P2d 195 (1951).

[REDACTED]

[REDACTED] }}

Article 11(b) states:

{{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

Here, the collapse of the bridge constitutes {{ [REDACTED]

[REDACTED] }} Furthermore,

WPRR (PNWR) was the party involved in the collapse, {{ [REDACTED]

[REDACTED] }} Thus, pursuant to the Interchange

Agreement, {{ [REDACTED]

[REDACTED]

[REDACTED] }}

{{ [REDACTED]

[REDACTED]

■ }} When the Bridge caught fire in 2022 – PNWR immediately assumed responsibility

and bore all costs. When the Bridge collapsed, PNWR again bore all costs for the

removal of the rail cars and bridge structures from the river. Additionally, PNWR also

bore all costs and liabilities associated with the environmental damage when they

received a fine from DEQ for discharging urea into the Marys River. {{ [REDACTED]

[REDACTED]

[REDACTED] }}

E. Complainants' claims remain applicable after April 29, 2026, because PNWR's embargo was unlawful and unreasonable.

In their Motion to Dismiss, PNWR asserted that when they embargoed the line on April 29, 2026, their common carrier obligations were formally suspended and along with it, "any obligation to operate over or rebuild the bridge." This is an admission by PNWR that during the 17 months prior to the embargo, while they refused to act or respond to Complainants' requests for service and information, they were obligated to operate and rebuild the bridge. Furthermore, their stated justification for failing to act is because they are still determining "whether there would be sufficient revenue from traffic using the bridge...to justify the high cost of rebuilding the bridge." Once again, the law on this is clear: "A railroad may not refuse to provide services merely because to do so would be inconvenient or unprofitable."³⁴ PNWR and G&W remain obligated to rebuild the bridge and provide service.

PNWR's embargo is unreasonable; therefore, they are liable for damages pursuant to 49 U.S.C. § 11704(b). To be valid, an embargo must always be reasonable.³⁵ Whether an embargo is reasonable or not is a fact specific inquiry, and is determined by balancing several factors, including the "length of the service cessation, the intent of the railroad, the cost of the repairs, the amount of traffic on the line, and the financial condition of the carrier."³⁶ Each of these factors demonstrate the unreasonableness of PNWR's embargo in this case.

1. The Length of the Service Cessation

The Marys River Bridge collapsed in early January 2025. For 19 months, there has been no service on this line and during this time, Defendants refused to take any action or provide any

³⁴ *Decatur Cty. Comm'rs*, *supra* note 4, at 715.

³⁵ *GS Roofing Prods. Co.*, 262 F3d at 773.

³⁶ 2001 STB LEXIS 633, *12, 2001 STB LEXIS 633.

information regarding a timeline to resume service. Defendants waited 17 months to embargo the line. Their actions here are unreasonable.

2. The Intent of the Railroad

The actions, or inactions, of PNWR on the Bailey Branch since January 2025 confirm a longstanding pattern of PNWR abandoning their duties as a common carrier dating back to the 1990s. Even when PNWR operated the section of the line now owned by VFRC, they refused to conduct repairs which PNWR was obligated to perform but never completed. This caused the line to fall into disrepair. To restore service to the line, VFRC was forced to take the unprecedented step of purchasing a section of the line to complete what PNWR was obligated to do years earlier.

PNWR is undoubtedly taking a similar approach to avoiding their common carrier duties now. Just as they have done for the previous 30 years, their intent is to find any possible way to not fulfill their obligations as a common carrier. “An embargo cannot be used by a railroad to unilaterally abandon or discontinue service on a line at its own election.”³⁷ By failing to take any action regarding the collapsed Marys River Bridge for nearly 17 months, despite being obligated to do so, their intent is clear.

3. The Cost of Repairs

PNWR has provided estimates ranging from \$3,800,000 - \$6,500,000 to replace the bridge. Complainants have provided an estimate of \$1,500,000. PNWR recently demonstrated a willingness to contract with Rick Franklin Corporation for over \$400,000.00 to remove their stranded locomotives which remain to this day on VFRC property. PNWR has not paid storage costs for these locomotives despite receiving an invoice from VFRC. By demonstrating a

³⁷ *Id.*

willingness to contract with Rick Franklin Corporation to remove their locomotives at a substantial cost, instead of investing that money into repairing the bridge which they are statutorily and contractually obligated to repair, PNWR sends a clear message that they are again attempting to evade their common carrier duties.

4. The Amount of Traffic on the Line

{{ [REDACTED]

[REDACTED] }} Furthermore, on information and belief, Nutrien shipped over 250 cars in the three years leading up to the collapse of the bridge, with this demand expected to continue.

5. The Financial Condition of the Carrier

PNWR is owned by G&W, which is the largest short line railroad holding company in North America. G&W's subsidiaries include over 13,000 miles of track and provide rail service at more than 30 major ports. In 2019, G&W was acquired by the \$16-billion-dollar global infrastructure company Brookfield Infrastructure Partners. G&W most certainly has the financial means to repair the Marys River Bridge and restore service to the Bailey Branch following PNWR's failures as a common carrier.

Each of the relevant factors above show PNWR and G&W's actions under the circumstances are unreasonable. Therefore, PNWR's embargo is unlawful, and Complainants continue to be entitled to damages following the embargo.

F. G&W should not be dismissed from this proceeding.

G&W is the parent company of PNWR and WPRR. For over 30 years, its subsidiary, PNWR, has failed to fulfill its common carrier obligations on the Bailey Branch, often citing financial reasons for its inability to discharge its statutory duties. For this reason, it would be unjust for PNWR's multi-billion-dollar parent company, who possesses ample financial

resources to fulfill its subsidiaries' duty, to be dismissed from the present action. Complainants have also understood G&W to be "working on" solutions to the bridge replacement since its collapse, as they control PNWR within the meaning of 49 U.S.C. § 10102(3). Thus, G&W should not be dismissed.

V. CONCLUSION

Viewing the alleged facts in the light most favorable to Complainants, Complainants have demonstrated multiple bases upon which relief could be granted in this case. Complainants have provided ample support to compel Board investigation and action, and Defendants PNWR and G&W have failed to carry their burden of establishing that there is absolutely no basis upon which relief could be granted. Therefore, PNWR and G&W's Joint Motion to Dismiss must be denied.

DATED this 17th day of July, 2026

FRANCIS HANSEN & MARTIN LLP

/s/ Martin E. Hansen

Martin E. Hansen, OSB #800526

Attorney for Complainants

CERTIFICATE OF SERVICE

I certify on the 17th day of July, 2026, I served the foregoing **COMPLAINANTS' REPLY TO PORTLAND & WESTERN RAILROAD INC. AND GENESEE & WYOMING INC.'S JOINT MOTION TO DISMISS** on the parties below by email:

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DATED this 17th day of July, 2026

FRANCIS HANSEN & MARTIN LLP

/s/ Martin E. Hansen
Martin E. Hansen, OSB #800526
Attorney for Complainants

CERTIFICATE OF SERVICE

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EXHIBIT 1

Interchange Agreement

Highly Confidential – Redacted

EXHIBIT 2

History Activity Report

Highly Confidential – Redacted

EXHIBIT 3

History Activity Report – Station 400

Highly Confidential – Redacted

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

Complainants,

v.

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

Defendants.

Docket No. NOR 42187

**DECLARATION OF LARRY VENELL IN
SUPPORT OF COMPLAINANTS' REPLY
TO PORTLAND & WESTERN RAILROAD
INC. AND GENESEE & WYOMING INC.'S
JOINT MOTION TO DISMISS**

I, Larry Venell, do hereby declare under penalty of perjury:

1. I am the owner of VFRC, LLC and Venell Farms, Inc., and I make this declaration based on my personal knowledge of its contents.
2. VFRC, LLC is a wholly owned subsidiary of Venell Farms, Inc. Both entities have their principal place of business in Corvallis, Oregon.
3. Since approximately 1956, Venell Farms, Inc. has shipped thousands of rail cars on the Bailey Branch.
4. Initially, Venell Farms, Inc.'s cargo primarily consisted of grass seed, but in the 1970s,

Venell Farms, Inc. began shipping a substantial amount of animal feed as well.

5. In approximately 1993, Portland & Western Railroad, Inc. (“PNWR”) approached shippers on the Bailey Branch, including Venell Farms, Inc., and asked us to increase our volume. Venell Farms, Inc. did so, increasing our volume by 60%.
6. In approximately 1996, due to the increased volume that was being requested by PNWR, Venell Farms, Inc. built a \$2,000,000 bulk loading facility on the Bailey Branch to facilitate further shipments by rail. Venell Farms, Inc. also added a spur and a switch at the North end of their bulk loading facility to facilitate a pass through, so PNWR did not have to pull loaded cars to Monroe, Oregon and back.
7. After Venell Farms, Inc. completed its new bulk loading facility, it engaged PNWR to start sending cars to the facility for shipments.
8. Between approximately 1992 and 2000, the track on the Bailey Branch had significantly deteriorated because PNWR failed to make necessary repairs to keep the track in safe operating condition.
9. This deferred maintenance by PNWR resulted in them needing to request emergency aid from the State of Oregon to repair the line. In or around August of 2000, PNWR received approximately \$250,000 in emergency repair funds.
10. As part of PNWR’s rehabilitation of the line, they also imposed a shipper paid maintenance surcharge of \$49 on all carloads to cover operating costs to serve the line. This \$49 surcharge was charged only to the local shippers on the track, including Venell Farms, Inc.
11. In or around the year 2002, PNWR received additional funding of approximately \$105,000 from the State of Oregon. Despite receiving these funds, a year later in 2003,

PNWR had still yet to repair the track. During this time, the \$49 surcharge continued to be charged to Venell Farms, Inc. and other shippers on the line.

12. In or around the year 2007, PNWR informed Venell Farms, Inc. that they were going to embargo the track, and that they were going to commence formal abandonment procedures.
13. This embargo left Venell Farms, Inc. and other shippers on the line with no rail service for over a year. This meant that Venell Farms, Inc. had to ship their products by truck, despite investing millions in their facility to keep up with PNWR's requests for increased volume. Because of the embargo, in one instance Venell Farms, Inc. was forced to truck 110 cars of pre-sold shipments to a buyer in order to honor a pre-existing contract with the buyer. Venell Farms, Inc. had to truck these cars on our own dime.
14. In 2007, Venell Farms, Inc., along with other shippers on the line, sued Union Pacific, Genesee & Wyoming, and the Willamette and Pacific Railroad in Benton County, Oregon Circuit Court. This lawsuit sought, among other things, injunctive relief and damages for breach of contract related to failures associated with not repairing or maintaining the track.
15. In or around 2010, instead of continuing to pursue the lawsuit in Benton County, a subsidiary of Venell Farms, Inc., VFRC, LLC, purchased a section of the Bailey Branch from Milepost 687.60 to Milepost 682.25 from Union Pacific.
16. This section of the line beginning at MP 687.60 begins approximately 1,500 feet south of the Marys River Bridge and continues south from there. In other words, the section of the line acquired by VFRC, LLC does not include and never has included the Marys River Bridge.

17. The decision to purchase this section of the line instead of further pursuing our claims in Circuit Court was borne out of decades of frustration at Defendants' failure to repair and maintain the track, despite the fact they were obligated to do so.
18. At the time that VFRC, LLC purchased the line, Union Pacific maintained a freight easement over the line but later transferred this easement to Albany & Eastern Railroad Company ("AERC"). AERC continues to operate the section of line owned by VFRC, LLC.
19. Following the purchase of the line in 2010, VFRC, LLC invested approximately \$800,000 in track upgrades and repairs that PNWR was required to complete but failed to do years earlier.
20. Immediately following the track upgrades and repairs, Venell Farms, Inc. commenced shipping products by rail, relying on the Bailey Branch's sole means of access to the interstate rail network: the Marys River Bridge.
21. Between 2011-2013, Venell Farms, Inc. shipped approximately 400 cars of wheat per year in addition to their ongoing shipments of grass seed and animal feed.
22. With an upgraded track and a reliable operator on the line (AERC), additional agriculture companies began investing in substantial infrastructure on the line. In 2018, Nutrien Ag Solutions constructed an \$8,000,000 shipping facility on the line because of the access to reliable rail interchange.
23. It is my understanding that Nutrien Ag Solutions has also been significantly impacted by Defendants' failure to replace the Marys River Bridge, and will be filing their own Complaint with the Surface Transportation Board shortly.
24. Leading up to the bridge catching on fire on May 2, 2022, Defendants had allowed a

large camp of homeless individuals to remain beneath the Marys River Bridge. It is my understanding that a lab used by the homeless camp to make methamphetamine exploded, which caused the pilings on the bridge to catch on fire. The fire burned for approximately 9 hours.

25. Less than three years later, in January 2025, the bridge collapsed. There was no “extreme high water” or “flooding” on or around the time of the Bridge collapse as Defendants claim.

26. Since the bridge collapse in January 2025, both Venell Farms, Inc. and VFRC, LLC have greatly suffered, and once again find themselves in the same position as they did in the 1990s and early 2000s. Because the bridge was the exclusive connection to the interstate rail network, its collapse has caused the complete cessation of interchange services. This has equated to lost revenue and income every day for Venell Farms, Inc. and VFRC, LLC.

27. The collapse of the bridge and the ongoing deferred replacement of the bridge by Defendants has also resulted in lost business opportunities for Venell Farms, Inc. and VFRC, LLC. For instance, in late 2024 prior to the bridge collapse, I was in discussion with Kalama Grain on behalf of both Venell Farms, Inc. and VFRC, LLC about loading their grain at my facility. This was a substantial business opportunity that has now fallen apart due to the ongoing lack of rail interchange.

28. Until as recently as 2023, I was shipping commodities along the Bailey Branch. This has since stopped due to the collapse of the bridge.

29. VFRC, LLC receives compensation for every car interchanged at VFRC, LLC’s facility (Station ID 400). This revenue has completely disappeared since the collapse of the

bridge.

30. It is my understanding that since the bridge's collapse, Nutrien Ag Solutions has been forced to truck in all fertilizer products, despite their \$8,000,000 investment in a rail loading facility in 2018. The increased truck traffic has caused congestion on local roadways in the community.
31. Since the bridge collapse, I have attempted to engage with Defendants on numerous occasions to request service and obtain information on when the bridge will be replaced. At times, Defendants simply did not respond to my communications. At other times, they failed to provide any information or substantive answers. For instance, on April 2, 2026, I called Scott Boyter, general manager of PNWR to request service and obtain additional information. I left a voicemail for Mr. Boyter. My phone call was never returned.
32. Given the lack of communication from Defendants and given my first-hand experience with Defendants' deferred maintenance and evasion of their common carrier obligations on the Bailey Branch, my attorney sent two separate letters to PNWR in late April demanding that interchange services with VFRC, LLC's trackage be resumed.
33. Additionally, when the bridge collapsed, two PNWR locomotives and sixteen PNWR freight cars had already crossed the bridge to the south side of the river. These two locomotives and sixteen railcars have remained stranded on the south side of the bridge since then. The two locomotives have been stored on VFRC, LLC's property without consent or payment of storage costs since January 2025.
34. On April 29, 2026, VFRC, LLC sent PNWR an invoice for 16 months siding and yard rent for the two locomotives, which PNWR never paid.
35. For over 18 months and counting, access by rail on the Bailey Branch has been

PUBLIC VERSION

impossible. Unfortunately, this blatant evasion of Defendants' common carrier obligations is not surprising, given that it is consistent with the way they have treated the Bailey Branch for over 30 years now.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for us as evidence in court and is subject to penalty for perjury.

DATED this 17th day of July, 2026

/s/ Larry Venell
Larry Venell

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**BEFORE THE
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VFRC, LLC, an Oregon Limited Liability
Company, VENELL FARMS, INC., an
Oregon Business Corporation, ALBANY &
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Complainants,

v.

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

Defendants.

Docket No. NOR 42187

**DECLARATION OF JACOB SNODGRASS
IN SUPPORT OF COMPLAINANTS'
REPLY TO PORTLAND & WESTERN
RAILROAD INC. AND GENESEE &
WYOMING INC.'S JOINT MOTION TO
DISMISS**

I, Jacob Snodgrass, do hereby declare under penalty of perjury:

1. I am the Director of Safety and Compliance at Albany & Eastern Railroad Company
("AERC"), and I make this declaration based on my personal knowledge of its contents. I
have worked at AERC full time since 2013.
2. AERC is a short line railroad which serves the mid-Willamette Valley. Its principal place
of business is in Lebanon, Oregon.
3. Following VFRC, LLC's acquisition of the Bailey Branch between Mileposts 687.60 and
682.25 (the "Venell Line") in 2010 from Union Pacific, Union Pacific transferred its

freight easement to AERC.

4. Portland & Western Railroad, Inc. (“PNWR”) previously held a lease to operate this section of the line with Union Pacific, but PNWR terminated it and transferred its operating rights on the line to AERC pursuant to a line operating agreement.
5. Since then, AERC has operated the section of line owned by VFRC, LLC.
6. In 2010, PNWR (formerly Willamette & Pacific Railroad) and AERC entered into an Interchange Agreement. {{ [REDACTED] [REDACTED] [REDACTED] }}
7. {{ [REDACTED] [REDACTED] }} This section is known on the ground as the “Orchard Siding.” AERC has never maintained anything north of the Orchard Siding {{ [REDACTED] [REDACTED] }} and PNWR has never requested that they do so.
8. {{ [REDACTED] [REDACTED] }}
9. PNWR always performed inspections of the bridge, and following the fire in 2023, assumed responsibility for repairs.
10. Following the bridge collapse, PNWR assumed responsibility for cleaning up the bridge from the river and assumed liability for the environmental fines from the Oregon Department of Environmental Quality for dumping 200 tons of urea into the river.
11. No trains, locomotives, cars, or equipment of AERC’s was involved in the bridge collapse.
12. Under Articles 10 and 11 of the Interchange Agreement, {{ [REDACTED] }}

_____ } }

15. After the bridge collapsed, AERC repeatedly reached out to Scott Boyter, general manager of PNWR, to request service and obtain additional information regarding when service would be resumed.

16. AERC was originally told that PNWR planned to rebuild the bridge. However, approximately two weeks after this, it is my understanding that PNWR's material source for the reconstruction fell through. Since then, the answer from PNWR/Scott Boyter to any requests for service or additional information has been that "corporate is working on it."

17. Since the bridge's collapse, two AERC locomotives have been stranded on the south side of the bridge. Because of this, AERC cannot use them to generate income as the bridge was the sole connection to the interstate rail network.

*I hereby declare that the above statement is true to the best of my knowledge and belief,
and that I understand it is made for us as evidence in court and is subject to penalty for
perjury.*

DATED this 17th day of July, 2026

/s/ Jacob Snodgrass

Jacob Snodgrass