

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

ROBERT DONALD GARRETT, SR.,
SARAH V. GARRETT, WILLIAM BLAINE
SMITH, HELEN DIANE SMITH, MARVIN
SMITH, JR., PATRICIA SMITH, JOEL
BRADFORD REED, KATHY LYNN REED,
LEO JOHN BRIGGS, GEORGIA ANN
BRIGGS, SALLY G. WELLS, DONNA N.
GARRETT, VERNE G. HOLLIS, HERUS
ELLISON GARRETT, and THOMAS
AHMAD LEE,

Petitioners,

v.

SANDERSVILLE RAILROAD
COMPANY,

Respondent.

Civil Action File No. 24CV012125

On Appeal from the Georgia Public Service
Commission, Docket No. 45045

**PROPERTY OWNERS’
PETITION TO SUPERIOR COURT FOR JUDICIAL REVIEW AND STAY**

R. Donald Garrett, Sr. and Sally Garrett; Leo and Georgia Briggs; Marvin Smith, Jr. and Patricia Smith; William Blaine Smith and Helen Diane Smith; Verne Kennedy Hollis, Donna N. Garrett, Herus Ellison Garrett, and Sally G. Wells; Joel and Kathy Reed; and Thomas Ahmad Lee (together, the “Property Owners”) file this Petition to Superior Court for Judicial Review and Stay against Respondent Sandersville Railroad Company (“Sandersville”),¹ showing as follows:

1. This appeal is on behalf of fifteen property owners in Sparta, Georgia. Sandersville seeks to condemn their property in violation of their rights under the Public

¹ In the proceedings before the Public Service Commission, the Property Owners were the “Respondents” and Sandersville was the “Petitioner.” In this proceeding, the Property Owners are “Petitioners” and Sandersville is the “Respondent.” To minimize confusion, the Property Owners will refer to themselves as the “Property Owners” and the railroad as “Sandersville” in this Petition unless otherwise indicated.

Use Clauses of the U.S. and Georgia Constitutions and Georgia statutes. The Georgia Public Service Commission (“PSC”) granted Sandersville’s petition to condemn the Property Owners’ property so that it may build an entirely new rail line (the “Hanson Spur”), 25 miles from its current operations and completely unconnected to those operations, to serve a handful of private companies for Sandersville’s financial benefit and the financial benefit of these companies. The Hanson Spur is not a public use, and Sandersville may not use eminent domain to take property from the Property Owners to build it.

2. The Property Owners therefore petition the Superior Court of Fulton County for judicial review of the final judgment rendered by the PSC on September 12, 2024, in its Docket No. 45045, *Petition for Approval to Acquire Real Estate by Condemnation*. The Property Owners are entitled to judicial review of this order under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19.

CONCISE STATEMENT OF THE FINAL JUDGMENT APPEALED

3. Petitioners appeal the PSC’s September 12, 2024, Order Affirming and Adopting Hearing Officer’s Initial Decision (“PSC Order”), which granted Sandersville’s petition to condemn Petitioners’ property in PSC Docket No. 45045, *Petition for Approval to Acquire Real Estate by Condemnation*. The PSC Order is attached as Exhibit 1.

4. The PSC Order “affirms the Initial Decision of the Hearing Officer issued on April 1, 2024, and . . . adopts the Initial Decision in its entirety,” Ex. 1 at 2, and “expressly adopts the Hearing Officer’s findings of fact and conclusions of law set forth in the Initial Decision.” *Id.* The Hearing Officer’s Initial Decision is attached as Exhibit 2.

5. The Hearing Officer’s Initial Decision found “that the proposed condemnation by Sandersville Railroad serves a legitimate public purpose and is

necessary for the proper accommodation of the business of the company,” and granted Sandersville’s petition to acquire the Property Owners’ property. Ex. 2 at 18.

6. The PSC Order violates the U.S. and Georgia Constitutions and Georgia statutes; is made upon unlawful procedure; is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and is arbitrary and capricious. *See* O.C.G.A. §§ 50-13-19(h)(1), (3), (5), & (6).

RECORD IN THE LOWER JUDICATORY

7. The following describes any existing recording, transcript, or other record of evidence in the lower judicatory:

- The entire contents of Georgia Public Service Commission Docket No. 45045, *Petition for Approval to Acquire Real Estate by Condemnation*.

PARTIES, JURISDICTION, AND VENUE

8. The Property Owners were Respondents in the PSC proceedings below. They are R. Donald Garrett, Sr. and Sally Garrett; Leo and Georgia Briggs; Marvin Smith, Jr. and Patricia Smith; William Blaine Smith and Helen Diane Smith; Verne Kennedy Hollis, Donna N. Garrett, Herus Ellison Garrett, and Sally G. Wells; Joel and Kathy Reed; and Thomas Ahmad Lee. Each owns property that Sandersville, a private railroad company incorporated under Georgia law, seeks to condemn pursuant to the PSC Order.

9. Sandersville is subject to the jurisdiction of this Court and is the Respondent in this Petition because it was “adverse to [the Property Owners] and a party to the dispute underlying the final judgment rendered by the lower judicatory.” O.C.G.A. § 5-3-3(11). Sandersville’s counsel has consented to service of this Petition through counsel.

10. This Court has subject matter jurisdiction pursuant to O.C.G.A. §§ 5-3-4 and 50-13-19. The PSC is a lower judicatory body that rendered a final judgment

concerning Sandersville's petition to condemn the Property Owners' property. The PSC issued its order on September 12, 2024. This Petition, being filed within thirty (30) days from that Final Judgment, is timely filed pursuant to O.C.G.A. §§ 5-3-7(b) and 50-13-19(b).

11. Venue lies in Fulton County, Georgia, pursuant to O.C.G.A. §§ 5-3-4(a), 5-3-13(a), and 50-13-19(b) (vesting exclusive jurisdiction in the Superior Court of Fulton County to hear petitions for judicial review concerning PSC decisions).

12. The General Assembly has waived sovereign immunity for appeals brought pursuant to O.C.G.A. §§ 5-3-1 *et seq.*

STATEMENT OF FACTS AND NATURE OF INTEREST

13. Sandersville did not meet its burden to prove that the Hanson Spur is a public use or that the Hanson Spur is necessary for the accommodation of Sandersville's business. The PSC Order improperly granted Sandersville's petition to acquire the Property Owners' property.

14. Sandersville filed its Petition for Approval to Acquire Real Estate by Condemnation on March 8, 2023. Initially, Sandersville sought only to acquire property from Petitioners before this Court R. Donald Garrett, Sr. and Sally Garrett, whose property is in the path of the Hanson Spur. The Garretts intervened in the PSC proceedings to protect their property.

15. After other property owners in the path of the Hanson Spur (the remaining Petitioners here) moved to intervene in the PSC proceedings, Sandersville amended its petition to include the properties of Petitioners before this Court Leo and Georgia Briggs; Marvin Smith, Jr. and Patricia Smith; William Blaine Smith and Helen Diane Smith; Verne Kennedy Hollis, Donna N. Garrett, Herus Ellison Garrett, and Sally G. Wells; Joel

and Kathy Reed; and Thomas Ahmad Lee. The Property Owners have attached a map of the proposed route of the Hanson Spur to this Petition as Exhibit 3.

16. The Property Owners opposed Sandersville’s petitions and were granted intervention in the PSC proceedings to defend their property.

17. The No Railroad in Our Community Coalition (“Intervenors”), an unincorporated association of nearby residents that will be affected by the Hanson Spur—created in response to Sandersville’s threats to use eminent domain—intervened in the PSC proceedings to protect the interests of the community surrounding the Hanson Spur’s proposed route.

18. The Property Owners, Sandersville, and the Intervenors filed written testimony with the PSC in support of their positions.

19. On July 26, 2023, the Hearing Officer issued a Subpoena to Testify and Duces Tecum requesting 24 categories of documents from Sandersville. Sandersville did not provide documents in response to the majority of the Hearing Officer’s requests for documents, including requests for documents regarding the economic feasibility of the project.

20. On September 14, 2023, the Property Owners submitted a request to the PSC’s Hearing Officer to issue subpoenas for depositions of Sandersville’s witnesses.

21. On September 18, 2023, the Hearing Officer denied the Property Owners’ request that the PSC issue subpoenas for depositions of Sandersville’s witnesses.

22. The PSC held a hearing on November 27-30, 2023, at which live testimony was taken in front of the Hearing Officer.

23. The parties submitted post-hearing briefing, and the Hearing Officer issued his Initial Decision on April 1, 2024.

24. The Initial Decision found “that the proposed condemnation by Sandersville Railroad serves a legitimate public purpose and is necessary for the proper accommodation of the business of the company,” and granted Sandersville’s petition to acquire the Property Owners’ property. Ex. 2 at 18.

25. The Property Owners filed an Application for Full Commission Review of Hearing Officer’s Initial Decision, Request for Oral Argument, and Motion for Stay of Order on April 30, 2024. The Intervenors also applied for full Commission review. Sandersville opposed.

26. The PSC granted the Property Owners’ and Intervenors’ applications for full Commission review, and oral argument took place before the full PSC on August 6, 2024.

27. The PSC voted unanimously (and without comment) to approve the Hearing Officer’s Initial Decision on September 4, 2024, and issued the PSC Order on September 12, 2024.

28. Although the PSC’s staff recommended the PSC stay the effective date of its order until the conclusion of all judicial proceedings, the PSC refused to consider the Property Owners’ request for a stay and no stay is currently in place.

29. The PSC Order is a final agency decision appealable under the Georgia Administrative Procedure Act.

30. The Property Owners are aggrieved by the PSC Order because it purports to allow Sandersville to acquire the Property Owners’ property via eminent domain in violation of their constitutional and statutory rights, condemn that property, and build a private railroad on it.

31. The Property Owners have exhausted all administrative remedies available before the PSC and bring this petition to overturn the PSC's clearly erroneous order.

GROUND FOR REVERSAL

32. The PSC erred in granting Sandersville's petition to condemn the Property Owners' property. Pursuant to O.C.G.A. §§ 5-3-1 *et seq.* and 50-13-19, the Property Owners file this Petition for Review seeking reversal of the PSC Order.

33. For reasons to be stated more fully in the Property Owners' briefing before this Court, the PSC Order prejudices substantial rights of the Property Owners because it violates Georgia statutes; is clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; is arbitrary and capricious; violates the U.S. and Georgia Constitutions; and is made upon unlawful procedure. *See* O.C.G.A. § 50-13-19(h)(1), (3), (5), & (6).

34. The Property Owners are entitled to an order from this Court reversing the PSC Order and denying Sandersville's petition to condemn the Property Owners' property.

REQUEST FOR STAY

35. Pursuant to O.C.G.A. § 50-13-19(d)(1), the Property Owners seek an immediate stay of the PSC Order until this Court issues a decision, and any appeals of that decision are concluded.

36. The Property Owners also seek an immediate stay of any condemnation proceedings initiated by Sandersville until this Court issues a decision and any appeals of that decision are concluded.

37. Under the Georgia Administrative Procedure Act, filing a petition for judicial review "does not itself stay enforcement of the agency decision," but "the agency

may grant, or the reviewing court may order, a stay upon appropriate terms for good cause shown.” O.C.G.A. § 50-13-19(d)(1). Stays of proceedings to enforce judgments “preserve [the] status quo or the effectiveness of the judgment subsequently to be entered.” O.C.G.A. § 9-11-62(e). Before a condemnor may gain title to property, courts must “determine whether the exercise of the power of eminent domain is for a public use and whether the condemning authority has the legal authority to exercise the power of eminent domain,” and courts are empowered to “stay other proceedings of the condemnation pending the decision of the court.” O.C.G.A. § 22-1-11.

38. For reasons to be stated more fully in the Property Owners’ briefing before this Court, and as recognized by PSC Staff, a stay of the PSC Order would maintain the status quo and prevent further prejudice to the Property Owners’ substantial rights.

39. If Sandersville is allowed to pursue condemnation proceedings against the Property Owners’ property, take such property via eminent domain, and enter onto and begin constructing the Hanson Spur on the Property Owners’ property, the Property Owners will be irreparably harmed. Specifically, construction of the Hanson Spur will involve the railroad clear cutting a 4.5-mile swath, 200 feet wide, with extensive excavation and construction of 40-foot berms on both sides of the track.

40. On information and belief, if allowed to take possession of the Property Owners’ property, Sandersville will prepare the land to begin building a railroad and irreversibly damage or change the properties. Once railroad construction begins, the Property Owners’ properties will be dramatically and irreparably damaged. Grading the land and stripping it of its trees and vegetation across a 200-foot-wide swath will permanently degrade that land and interfere with the Property Owners’ use of it.

41. Condemnation proceedings against the Property Owners' property would require a determination of whether the Hanson Spur is a public use. If this Court does not stay the PSC Order and any condemnation proceedings against the Property Owners' property, the Property Owners and Sandersville will expend unnecessary money, resources, and time litigating duplicative proceedings.

42. The Property Owners are likely to prevail on the merits of their appeal. This case concerns the scope of the Public Use and Public Purpose Clauses of U.S. and Georgia Constitutions, respectively, and how those provisions interact with state statutes granting eminent domain powers to private entities. It also presents issues regarding the interaction of Georgia's eminent domain laws and Georgia's laws regarding condemnations by private entities. It also presents issues regarding the proper application of the burden and the standard of proof in railroad condemnation proceedings. Given Georgia's strong protections for the rights of private property owners in the Georgia Constitution and Georgia statutes, the Property Owners will likely win on any or all of these points.

43. A stay would also not harm Sandersville. Sandersville currently operates a business that is unrelated to the railroad it wants to build across the Property Owners' properties, and Sandersville's current business will be unaffected as this appeal proceeds. Nor will the putative users of the Hanson Spur project suffer harm when a stay is issued. All of Sandersville's putative customers are currently operating without the Hanson Spur. As of the time of the hearing before the PSC, moreover, none had signed any binding (or even contingent) agreements with Sandersville. Thus, no harm will come to the other parties in this proceeding should this Court stay Sandersville's efforts to take the Property

Owners' property while the court considers the legality of Sandersville's proposed condemnation.

44. A stay would also promote the public interest. The public has no interest in allowing Sandersville to irreparably damage property it has no legal right to take. In contrast, the public has a significant interest in making sure that before Sandersville takes irreversible action, the Georgia courts have determined with finality whether that action comports with the U.S. and Georgia Constitutions and Georgia statutes.

PRAYER FOR RELIEF

The Property Owners respectfully request that the Court grant the following relief:

A. An immediate stay of the PSC Order until this Court issues a decision, and any appeals of that decision are concluded;

B. An immediate stay of any condemnation proceedings and any actions related to condemnation pursued by Respondent Sandersville Railroad Company until this Court issues a decision and any appeals of that decision are concluded;

C. A schedule for the filing of written briefs by the parties under O.C.G.A. § 50-13-19(g) and, after the submission of those briefs, a schedule setting the matter for oral argument;

D. Reversal of the PSC Order;

E. Denial of Sandersville's petition to acquire the Property Owners' property;

F. Attorneys' fees and costs incurred in this action pursuant to O.C.G.A. § 5-3-20 and O.C.G.A. § 22-1-12; and

G. Such other relief as the Court deems just and proper.

Dated: September 23, 2024.

Respectfully submitted,

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Robert Donald Garrett, Sr., et al. v. Sandersville Railroad Company
Property Owners' Petition to Superior Court for Judicial Review and Stay

EXHIBIT 1

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TIM G. ECHOLS, Vice-Chairman

FITZ JOHNSON

LAUREN "BUBBA" McDONALD

TRICIA PRIDEMORE

FILED

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Georgia Public Service Commission

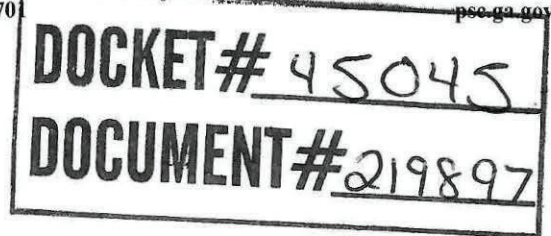
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DOCKET NO. 45045



**IN RE: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by
Condemnation**

**ORDER AFFIRMING AND ADOPTING
HEARING OFFICER'S INITIAL DECISION**

On March 8, 2023, the Sandersville Railroad Company ("Sandersville" or "Petitioner") filed its Petition for Approval to Acquire Real Estate by Condemnation, pursuant to O.C.G.A. §§ 46-8-120 and 46-8-121 (the "Initial Petition") with the Georgia Public Service Commission ("Commission") for a railroad spur line. The Initial Petition named Mr. R Donald Garrett as the Respondent but was amended on July 20, 2023, to include the owners of the additional properties sought for condemnation. Furthermore, No Railroad in Our Community Coalition ("NROCC"), a coalition of neighboring property owners whose properties were not a part of the petition, intervened to oppose the petition.

On March 24, 2023, the Commission assigned this matter to a hearing officer, and an evidentiary hearing was held on November 27, 28, 29, and 30, 2023. Following the receipt of briefs by all parties, on April 1, 2024, the Hearing Officer issued his Initial Decision on the Petition, finding that the proposed condemnation by the Petitioner served a legitimate public purpose and was necessary for the proper accommodation of the business of the company; thereby, granting the Petition for Approval to Acquire Real Estate by Condemnation by the Petitioner.

Pursuant to O.C.G.A § 50-13-7(a), on April 30, 2024, and May 1, 2024, respectively, Respondent Property Owners ("Respondents") and Intervenor No Railroads in Our Community Coalition ("NROCC"), filed applications for full commission review of the hearing officer's initial

decision in this matter. In their Application, the Respondents and Intervenor requested that the Commission hear oral arguments on the matter and reverse the Hearing Officer's Initial Decision. On May 22, 2024, Petitioner filed a brief in opposition of the application.

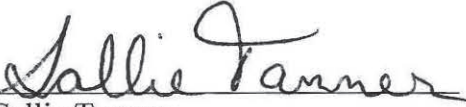
The Commission granted the Application for Review and oral arguments were heard from all parties on August 6, 2024. During the September 4, 2024 Administrative Session, the Commission voted to affirm and adopt the Hearing Officer's Initial Decision.

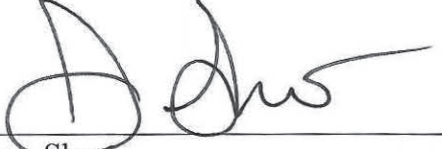
WHEREFORE IT IS ORDERED that Commission affirms the Initial Decision of the Hearing Officer issued on April 1, 2024, and hereby adopts the Initial Decision in its entirety. By affirming the Initial Decision, the Commission expressly adopts the Hearing Officer's findings of facts and conclusions of law set forth in the Initial Decision.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in its Administrative Session on the 4th day of September 2024.


Sallie Tanner
Executive Secretary


Jason Shaw
Chairman

9-12-24
Date

9-12-24
Date

EXHIBIT 2

COMMISSIONERS:

JASON SHAW, Chairman
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**In re: Sandersville Railroad Company's
Petition For Approval to Acquire Real
Estate by Condemnation**

Docket No.: 45045

INITIAL DECISION

Statement of Proceeding

This proceeding was initiated on March 8, 2023, with the filing by the Sandersville Railroad Company's ("Sandersville" or "Petitioner") of a Petition for Approval to Acquire Real Estate by Condemnation, pursuant to O.C.G.A. §§ 46-8-120 and 46-8-121 (the "Initial Petition") with the Georgia Public Service Commission ("Commission") for a railroad spur line. The Initial Petition named as a Respondent Mr. R. Donald Garrett, Sr. ("Mr. Garrett") and sought authority for Sandersville Railroad to acquire by condemnation Project Parcel 13, a strip of right of way from the larger real property of Mr. Garrett. The right-of-way required on Project Parcel 13 is 2.11 acres, 460 feet long and 200 feet wide. (Tr. 466:17-22 (Teague)). This represents 2.63 percent of the total land owned by Mr. Garrett. (Tr. 479:21-22 (Teague)).

On June 20, 2023, certain owners (the "Intervening Respondents" and collectively, with Mr. Garrett, the "Respondents") of other real estate from which 200'-wide strips of the right of way (*i.e.*, Project Parcels) were required for the spur line intervened in this docket. The Intervening Respondents are:

- (1) Mr. Leo J. Briggs and Ms. Georgia A. Briggs (the "Briggs"), owners of Project Parcel 6;
- (2) Mr. Marvin Smith, Jr. ("Mr. M. Smith"), owner of Project Parcel 7;
- (3) Mr. William Blaine Smith and Ms. Helen Diane Smith (the "Smiths"), owners of Project Parcel 8, 10, & 11;

(4) Mr. Verne Kennedy Hollis, Ms. Donna N. Garrett, Mr. Herus Ellison Garrett, and Ms. Sally G. Wells (the “Parcel 14 Owners”), owners of Project Parcel 14;

(5) Mr. Joel Reed (“Mr. Reed”), owner of Project Parcel 12; and

(6) Mr. Thomas Ahmad Lee (“Mr. Lee”), owner of Project Parcel 18

In their Applications for Leave to Intervene, the Intervening Respondents opposed the Initial Petition, expressing their desire to retain possession of their full parcels and not convey to Sandersville Railroad, absent condemnation, the right of way (i.e., Project Parcels) from their respective real properties required for the Hanson Spur, and requesting that they be entered into this matter as parties.

On July 20, 2023, Sandersville Railroad filed an Amended Petition For Approval To Acquire Real Estate By Condemnation (the “Amended Petition”) seeking to acquire by condemnation the Project Parcels owned by the Intervening Respondents.

The Project Parcels Sandersville Railroad seeks to acquire are for the Intervening Respondents are:

(1) Project Parcel 6: 200 feet wide by 3,170 feet long, which is approximately 6.95% of the Briggs’ current larger parcel;

(2) Project Parcel 7: 200 feet wide by 1,105 feet long, which is approximately 4.89% of Mr. M. Smith’s current parcel;

(3) Project Parcel 8, 10, and 11: 200 feet wide by 2,466 feet long, which is approximately 7.02% of the Smiths’ current parcels;

(4) Project Parcel 14: 200 feet wide by 674 feet long, which is approximately 3.85% of the Parcel 14 Owners’ current parcel;

(5) Project Parcel 12: 200 feet wide by 1,024 feet long, which is approximately 5.72% of Mr. Reed’s current parcel; and

(6) Project Parcel 18: 200 feet wide by 421 feet long, which is approximately 3.06% of Mr. Lee’s current parcel.

(Tr. 462:3-469:3 (Teague)).

On June 21, 2023, No Railroad in Our Community Coalition (the “NROCC”) intervened to oppose the Petition. NROCC consists of Melanie Benson, Bennie Clayton, Eloise Clayton, Kenneth

Clayton, David Mark Smith, Janet P. Smith, Betty Lamar, James Lamar, and Elizabeth Scott. None of these individuals own property that would be required for the Hanson Spur.

On March 24, 2023, a hearing officer (the “Initial Hearing Officer”) was assigned and on May 18, 2023, a Procedural and Scheduling Order and Notice of Hearing (the “PSO”) was entered, and thereafter amended, requiring (1) Sandersville Railroad to pre-file direct testimony; (2) other parties to file responsive testimony; and (3) Sandersville Railroad to pre-file rebuttal testimony.

Sandersville Railroad, the Respondents, and NROCC filed testimony. On July 21, 2023, Sandersville Railroad pre-filed direct testimony of Benjamin J. Tarbutton, III., Allen R. Haywood, Arnie Pittman, Cale Veal, Gregory D. Teague, Jeff Custer, and Scott Dickson. On August 25, 2023, Respondents pre-filed testimony for Donald J. Kochan, and Gary Hunter. On September 25, 2023, Respondents pre-filed Responsive Testimony of Marvin Smith, Jr., Bradford Reed, Thomas Ahmad Lee, William Blaine Smith, Donald Garrett, Sr., and Leo Briggs. On August 28, 2023, NROCC pre-filed testimony for Dr. Conner Bailey, and Dr. Erica Walker. On September 28, 2023, NROCC filed the Direct Testimony for Bennie Clayton, Commissioner Randolph Clayton, Elizabeth Scott, Janet Smith, Kenneth Clayton, Mark Smith, and Melanie Benson. Sandersville Railroad also filed rebuttal testimony for three of its witnesses, Messrs. Tarbutton, Dickson, and Pittman.

An evidentiary hearing (the “Hearing”) was held on November 27, 28, 29, and 30, 2023. On November 27, 2023, shortly after the start of the hearing, an Order Substituting Hearing Office was issued by the Commission due to illness of the Initial Hearing Officer and a substitute hearing officer (the “Hearing Officer”) was assigned. No party objected to the substitution. Transcript 89-91. At the Hearing, all the above-referenced testimonies were admitted over various objections.

At the conclusion of the hearing, the parties consented to a briefing schedule and the briefs have been filed. Testimony, Hearing Exhibits and arguments raised by the parties were considered by the undersigned Hearing Officer in arriving at this Initial Decision.

Contentions of the Parties

Sandersville Railroad argues that the Commission should approve Sandersville Railroad’s Petition to acquire the land necessary to build a railway Spur (the “Hanson Spur”) because the Sandersville Railroad has the statutory and constitutional authority under Georgia law to condemn land for a public purpose that is necessary for the proper accommodation of its business. Sandersville Railroad’s asserts that its business is transporting the goods of small businesses,

industries, and farmers and connecting those customers with larger rail networks. Sandersville Railroad's further asserts that the construction of the Spur will serve a public purpose because it will open a new channel of trade for the underserved businesses of East middle Georgia and because it will use the land for the functioning of the railroad.

Respondents contend that the Railroad has failed to meet its burden of demonstrating that its proposed condemnation of Respondents' property meets the requirements for a railroad's exercise of eminent domain under Georgia law. First, Respondents argue that the Railroad's proposed condemnation is not a public use. It is instead a pretextual private taking. Second, Sandersville has failed to meet its burden of demonstrating that it meets the statutory standards applicable to condemnations by railroads. The Railroad has not demonstrated that the proposed line is necessary for the proper accommodation of the business of the company and has not demonstrated that the proposed Hanson Spur will provide channels of trade.

Intervenor NROCC adopts the arguments contained in the Respondents' Brief. In addition, NROCC argues that the Sandersville Railroad Company has not met its burden of demonstrating that it is authorized to exercise the extraordinary power of eminent domain or that its intended project is a legitimate public use as set forth by Georgia statute. NROCC states that it is a naked land grab by a private company hoping to enrich itself and a handful of its friends at the expense of a predominantly Black community of landowners, many of whom inherited the land from ancestors who bought it shortly after Emancipation. The Sandersville Railroad Company should not be permitted to perpetuate the deprivation of Black landownership in this country and in Hancock County on little more than its assurances, without proof, that the Hanson Spur would serve a public use.

Findings of Fact

The evidence shows, as here pertinent, the following facts:

Railroads are in the business of providing transportation. (Tr. 1216:12-17 (Hunter)). A spur is a secondary track that connects with a main track to provide rail access to industrial areas. Spur lines also comprise a significant role in the Freight Railroad Network, switching cars to and from shippers and receivers seeking transportation over that network. (*E.g.*, Tr. Ex. 53 (Georgia State Rail Plan of the Georgia Department of Transportation ("Georgia State Rail Plan") at 2-1, 2-7, 2-34, 4-14, 5-31 to 5-32, 5-39). Smaller railroads can play an integral transportation role by providing "last mile" service, supplying service into and out of customer locations and connecting these

customers to the broader U.S. railroad network through connections with Class I railroads.” (Tr. Ex. 53 at 4-1).

Sandersville Railroad Company is a corporation owning and operating a railroad in the State of Georgia. It is a state-chartered, Class III short line railroad company that has been serving farmers and industries in East middle Georgia since 1893. (Tr. 30:20-21 (Tarbutton)). Currently, Sandersville Railroad operates between Sandersville, Georgia and Tenille, Georgia. (Tr. 30:21-31:2 (Tarbutton)).

Sandersville Railroad has connected East middle Georgia industries, businesses, and farmers with the national Freight Railroad Network. (Tr. 42:23-25 (Tarbutton)). It does so by providing rail transportation services so its customers can ship on Norfolk Southern’s rail system. (Tr. 30:18-31:2 (Tarbutton)). The railroad operates 10 miles of mainline track and an additional 25 miles of spurs. (Tr. 30:21-22 (Tarbutton)); (Tr. Ex. 53 at 2-10).

Sandersville Railroad has proposed to construct and operate a spur track to provide an efficient connection to the CSX network for these unserved and underserved customers. This spur track (the “Hanson Spur”) will connect a rock quarry (the “Hanson Quarry”) located on Shoals Road, Southeast of Sparta, Georgia, and owned by Heidelberg Materials (“HM”) to CSXT’s rail network vial CSXT’s Camak subdivision, which runs between Camak, Georgia near Interstate 20 and Milledgeville, Georgia, while generally paralleling Georgia State Route 16. (Tr. 33:12-14 (Tarbutton); Tr. 453:15-22 (Teague)). “The Hanson Spur will also have a pullback track on the other side of Shoals Road.” (Tr. 453:22-454:1 (Teague)).

Sandersville’s existing rail lines are about 25 miles from Sparta and Respondents’ properties. (Tr. 30:21-31:2, 94:5-7.) Currently, Sandersville has no railroad lines in Sparta. (Tr. 70:15-17, 102:21-23.). The Hanson Spur would be 4.5 miles in length and connect to CSXT, but it would not connect to any existing Sandersville lines. Am. Pet. ¶ 2. The parties disagree about whether the Hanson Spur is a technically a “spur” as that term is used in federal regulations since the Hanson Spur connects to a line owned by CSXT rather than Sandersville. Without deciding this issue, it is referred to it as a spur in this Order for convenience.

The Hanson Spur’s route was chosen after consultation with Croy Engineering, which created the best route after considering constraints such as the surrounding watercourses, regulated wetlands and floodplains, a neighboring environmental conservation area, resident feedback, existing residential structures, Georgia Power transmission lines, a Verizon Wireless cell tower, and American Railway Engineering and Maintenance-of-Way Association (“AREMA”) design

guidelines. (Tr. 455:14-458:18 (Teague)). Croy also consulted an environmental expert, CorBlu, to minimize or eliminate any impacts to regulated wetlands resources, potential archeological resource sites, and potential habitat for threatened or endangered species. (Tr. 457:14-21 (Teague)). Additionally, Sandersville Railroad has been working with CSXT on the Hanson Spur. (Tr. 49:14-15 (Tarbutton)). However, Sandersville has not yet obtained interchange rates from CSX. (Tr. 166:4-22.) Sandersville Railroad will also build facilities along the Hanson Spur at or near the Hanson Quarry that will permit transloading, which is the loading and unloading of goods between rail car and truck. (Tr. 48:10-14 (Tarbutton)).

Mr. Tarbutton testified that:

On the Hanson Spur, Sandersville Railroad will operate as a private switch carrier. In this more limited scope of operation, Sandersville Railroad will offer its switch services to any shipper that wants to negotiate a contract rate on mutually satisfactory terms. By operating in this manner, Sandersville Railroad can most efficiently facilitate carriage [for shippers and receivers] to and from the Hanson Spur by CSXT [and the national Freight Railroad Network].

(Tr. 1501:14-18 (Tarbutton)).

Sandersville Railroad expects its new switching service will provide one round trip per day on the new spur, Monday through Friday during daylight hours. (Tr. 48:19-21 (Tarbutton)). The train will run at less than 20 miles per hour and will haul aggregates, woodchips, liquid asphalt, and agricultural products. (Tr. 48:19-49:2 (Tarbutton)).

The Hanson Spur requires eighteen (18) Project Parcels, each of which are 200 feet wide. Sandersville Railroad has agreed to construct, at the railroad's expense, an at-grade crossing for any landowner that retains land on both sides of the spur's right of way.

Providing services so industries can ship on larger railroad lines, such as Norfolk Southern's rail system, is the essence of Sandersville's rail transportation business. (Tr. 31:20 (Tarbutton)). Neither Sandersville Railroad nor any other short line railroad in East middle Georgia has direct access to the CSXT rail system, which serves points and regions that Norfolk Southern does not, including parts of New York and New England. (Tr. 34:19-21, 38:17-21 (Tarbutton)). To access the CSXT rail network via Norfolk Southern and Sandersville Railroad, customers must pay charges per railcar to switch between those two Class I railroads that "often make transportation by rail uneconomical; and, in many cases, leave local industries, companies, and farmers unable to reach certain markets and off takers." (Tr. 34:19-35:1; 103:15-104:3 (Tarbutton)). The Hanson Spur

would provide these customers with direct access to CSXT's rail line and its network without the added and frequently prohibitive cost of switching charges. (Tr. 35:2-4; 45:18-23).

Five companies appeared in this proceeding expressing their support of the spur and their interest in using the spur to reach broader markets through the CSXT rail line. These companies also stated that they have entered into memoranda of understanding with Sandersville Railroad regarding their future use of the spur. But, none have signed a binding contract with Sandersville to use the Hanson Spur or signed contracts with purchasers for their products they expect to ship on the Hanson Spur. (Tr. 101:19-21.) (E.g., Tr. 313:7-10 (Veal), 368:15-23 (HM).). Those companies are: HM, Pittman Construction, Revive Milling, Veal Farms, and Southern Chips. (Tr. 48:3-9; 100:12-15). Three of the companies, Revive Milling, Veal Farms, and Southern Chips, had approached Sandersville Railroad about establishing direct access to CSXT before the Hanson Spur project began to come to fruition. (Tr. 0108:4-15 (Tarbutton)). The owner of the Hanson Quarry, HM "is an international supplier of heavy construction materials." (Tr. 199:15 (Dickson)).

The Hanson Spur will permit HM to deliver its construction aggregates via CSXT to markets it could not otherwise feasibly reach (Tr. 203:1-3 (Dickson)) and will allow the Hanson Quarry to expand its operation. (Tr. 205:2-5 (Dickson)).

Co-located at the quarry is a regional asphalt plant of Pittman Construction Company ("Pittman Construction"), which desires to use the Hanson Spur. (Tr. 222:2-6, Tr. 223:4-8 (Pittman)). The Hanson Spur will permit Pittman Construction to ship liquid asphalt by rail directly to its asphalt plant co-located at the Hanson Quarry. (Tr. 223:11-13 (Pittman)). To accomplish the same shipment via truck, Pittman would have to heat the asphalt, transload it onto a truck, and then heat it again to move the asphalt off the truck and onto a railcar. (*Id.*). The Hanson Spur will permit Pittman Construction to ship liquid asphalt by rail directly to its asphalt plant co-located at the Hanson Quarry. (Tr. 223:11-13 (Pittman)). Thus, constructing the Hanson Spur will create a new shipping route from Pittman Construction's suppliers (i.e., oil refineries) to the company's Sparta Plant. (*Id.*). This new shipping route will reduce the "need to ship liquid asphalt to [a liquid-asphalt terminal facility that Pittman Construction co-owns in] Lithonia . . . and then ship it by truck on local roads to" the Hanson Quarry. (Tr. 223:12-14 (Pittman)).

Mr. Pittman testified that Pittman Construction required a short line railroad to provide it and other companies like it with direct access to the CSXT rail system; it could not feasibly provide itself a connection to the CSXT rail system. (Tr. 257:20-258:7 (Pittman)).

Sandersville Railroad will also build facilities along the Hanson Spur at or near the Hanson

Quarry that will permit transloading, which is the loading and unloading of goods between rail car and truck. (Tr. 48:10-14 (Tarbutton)). Other East middle Georgia businesses have also expressed that their interest in using the Hanson Spur to transload goods to rail to ship to markets exclusively or best served by the CSXT rail network. Mr. Cale H. Veal (“Mr. Veal”) testified on behalf of two of those other customers who will ship goods using the Hanson Spur—Revive Millings, LLC (“Revive Millings”) and Veal Farms Transload, LLC (“Veal Farms”). (Tr. 1465:4-6 (Veal)).

“Veal Farms Transload buys, stores, and loads to rail grains and other agricultural products for its own and its customers’ uses.” (Tr. 1466:5-6 (Veal)). “Revive Milling buys and processes grain into food ingredients, such, as starches, and then sells and transports those refined ingredients by rail to food producers.” (Tr. 1466:6-8 (Veal)). The Hanson Spur will permit customers of both businesses to reach markets that are not directly served by the Norfolk Southern rail system. (Tr. 1466:17-22 (Veal)).

Mr. Veal, a managing member of these companies, testified that Class I railroads do not serve smaller companies, industries, and farmers “because they don’t have enough volume.” (Tr. 303:15-16, Tr. 304:19-307:23 (Veal)). But, with the Hanson Quarry and the combined “volume of the rock quarry” and goods of other users, these smaller, local companies, industries, and farmers are “able to capitalize on that . . . by being able to get food ingredients [and other goods] more economically to an end user.” (Tr. 303:17-22 (Veal)). The lack of a viable rail trade route for these companies to reach markets served by CSXT is “a major infrastructure problem in” the United States. (Tr. 303:22-24 (Veal)). The Hanson Spur, thus, provides a new route for these companies to deliver their goods to market.

Southern Chips LLC (“Southern Chips”) is in the business of “provid[ing] paper quality wood chips to paper mills throughout the southeast United States and beyond . . . almost exclusively by rail.” (Tr. 247:20-22 (Custer)). It will use the spur to deliver wood chips on the CSXT rail system and “reach new markets for our products at a lower cost to our customers.” (Tr. 248:7-11 (Custer)). “Southern Chips Mr. Jeffrey Lamar Custer (“Mr. Custer”), the Wood Procurement and Fiber Sales Manager of Southern Chips, testified on behalf of Southern Chips and in support of the Hanson Spur. (Tr. 247:4-6 (Custer)). Mr. Veal has responsibility for the day-to-day operations and strategic business decisions of Southern Chips. (Tr. 249:12-14 (Custer)). Mr. Custer testified that CSXT “provides service to more than 80 pulp and papermills” via a trade route that is not available to Southern Chips: direct shipments on the CSXT rail system. (Tr. 249:21-250:5 (Custer)). Three to five other customers that did not testify in this proceeding have also indicated their interest in

utilizing the Hanson Spur if constructed. (Tr. 149:5-11 (Tarbutton)). Sandersville would set the private contract terms and rates for potential shippers to take or leave. (Tr. 110:7-17.).

Sandersville Railroad has not performed a detailed feasibility study on the proposed Hanson Spur, which is unusual for a new railroad construction project. (Tr. 1174:10-13.). Such a study would typically involve interviewing potential customers, obtaining specific origins, destinations, and volumes, and obtaining specific rates from the Class I railroad involved. (See Tr. 1177:3-1178:11). Respondents' witness Mr. Hunter constructed his own feasibility analysis based on available information and concluded that the Hanson Spur would take decades to recover its capital costs. (Tr. 1198:22-1199:8.). Sandersville Railroad responded by stating that it will self-fund the entire construction of the Hanson Spur. (Tr. 49:11-12 (Tarbutton)). Although construction will entail high capital costs, "once [the spur] is built those costs will be sunk and the variable costs of fuel, labor and maintenance will be covered by the revenue of its customers." (Tr. 50:6-9 (Tarbutton)).

The Railroad seeks to take sections of properties owned by Respondents near Sparta, Georgia. In addition to the specific parcels the Railroad wishes to acquire, Respondents testified that the taking will destroy many attributes of Respondents' remaining property. Respondents are deeply invested in the heritage, use, and enjoyment of their property. They have longstanding ties to it. They use and benefit from it, and they deeply value it.

The Smith family has owned its land (Parcels 6, 7, 8, 10, and 11) for almost a century. (Tr. 761:9.) The Smith's great-grandmother was born into slavery on the plantation that once occupied the land they now own. (Tr. 761:10.) Her son-in-law, the Smiths' grandfather, was able to purchase several hundred acres that have been in the family ever since. (Tr. 651:14-653:5, 761:11.) Today, the Smith family land is owned by William Blaine Smith and his wife Diane; David Mark Smith and his wife Janet; Marvin Smith, Jr. (Blaine's and Mark's cousin) and his wife Pat; and Thomas Ahmad Lee (Blaine's and Mark's nephew). These are legally discrete parcels but are all physically connected. (Tr. 591:12-21 (Mark and Janet Smith), 762:7-13 (Teague).) The Railroad seeks to take land from parcels owned by Blaine Smith, Marvin Smith, and Ahmad Smith. (Tr. 459:16-460:1.) The Smiths live and gather at their family property. (See Tr. 762:22-763:12 (Blaine Smith); 819:11-14 (Marvin Smith); 543:6-11 (Mark Smith); 592:10-593:17 (Janet Smith).) They farm it, timber it, and enjoy it. (Id.) They share its produce with local elderly residents through their private food ministry and provide produce to the Georgia Department of Public Health, which distributes it through Helping Hands Food Pantry to Hancock County. (Id.) They open it to neighbors for fishing

and recreation. (Id.) They maintain and use the original Smith family “home house,” and preserve old outbuildings and farm relics left over from sharecropping eras. (Id.) They see their land as an opportunity to build generational wealth and feel a responsibility to pass it to future generations intact, as their ancestors passed it to them. (Tr. 548:3- 10, 764:5-20, 820:3-7.)

The Garrett family land (Parcels 13 and 14) has been in the family since just after the Civil War. (Tr. 891:24.) Parcel 13 is owned by Don Garrett, Sr. and his wife Sally. (Tr. 466:9-13.) Don’s nieces Sally G. Wells, Donna N. Garrett, Verne Kennedy Hollis and nephew Herus Ellison Garrett own Parcel 14. (Tr. 467:9-17.) Don and Sally Garrett live on and use their family land fully; they live, garden, timber, hunt, fish, hike and gather at their properties. (Tr. 892:10-21.) No barriers exist between the various Garrett parcels. (Tr. 967:2- 968:24, 974:8-14.) As Don, Sr. testified, the Garrett family land is the center of the Garrett family history. (Tr. 893:10-12.)

Sandersville wants to take acres from the two Garrett parcels. (Tr. 459:16-460:1.) The Hanson Spur will run through the middle of the parcels, cutting them in half and interfering with their access to half their property. (See SRR Ex. 6 (map of route, bisecting multiple parcels) and Tr. 900:8-18 (describing how the train will run through a small gorge and cut off a private road).) The Garretts will only be able to access half of their property through a small crossing the railroad proposes to install. (Tr. 900:8-18.) The Railroad alleged that the Garrett parcel does not include structures (Tr. 467:3-4); but, in fact, Don Garrett, Sr. and Sally Garrett have lived, and continue to live, in their home on their property for their entire marriage (Don, Sr. has lived on his land for 72 of his 76 years). (Tr. 892:8-11.) While Don Garrett and Sally Garrett’s house is on a separate tax parcel from the rest of their acreage, their property is one contiguous piece of land. (Tr. 967:14-968:24.) Their land is part of a government conservation program for planting trees and conserving soil. (Tr. 892:15-20.)

The historic Garrett home house lies on the Garrett family land. It sits on a parcel that Don Garrett, Sr. deeded to his son Don Garrett, Jr. and which is landlocked within Don Garrett, Sr.’s parcel. (Tr. 893:6-24.) The Hanson Spur will run within a few hundred yards of the Garrett home house (Id.), and Don Garrett, Sr. testified that he worries for Don Garrett, Jr.’s mental peace, as he is a special operations military veteran who suffers from PTSD. (Tr. 956:2-957:9.) Sally Wells’ niece Taylor’s home is on a parcel 7 landlocked by the property belonging to Sally Wells and her siblings. The Hanson Spur will run even closer to Taylor’s home than it will to the Garrett home house. (Tr. 961:18-962:1.)

Joel Reed has owned his property (Parcel 12) for 25 years. (Tr. 1007:18-23.) He lives at his

home there three months out of each year. He hunts, fishes, and hikes with his sons and grandchildren there. (Tr. 1008:1-19.) He has installed several deer stands. (Id.) He and his wife Kathy Reed grow timber there for sale. Joel Reed wishes to leave the property to his sons and grandchildren as it is. (Id.)

Leo and Georgia Briggs have owned their property (Parcel 6) for 26 years. (Tr. 855:18-19.) Like all the surrounding properties, the Briggses' property was once part of a cotton plantation. (Tr. 855:23-856:3.) The Briggses maintain the property in its natural state because they value it in its current pristine condition. (Id.) The Briggses do not disturb the old cotton terraces. (Tr. 855:23-856:3.) They maintain an old mule barn and a century-old sharecropper's home on the property for their historical value. (Tr. 856:1-3, 14-15) Each week, Leo Briggs is on the property, using a small hunting cabin and several permanent deer stands that he built, and he has developed food plots to nourish deer, turkey, and doves. (Tr. 856:4-9.) The Briggses also keep the property in its natural state and intend to keep it that way for themselves and future generations. (Tr. 856:20-23.)

The property is personally and uniquely valuable to Respondents. It is also not isolated strips removed from larger properties, as the Hanson Spur will cut most of Respondents' properties in half. (See SRR Ex. 6.) This will limit their access and use of their property. Respondents worry about noise and disruption to the peaceful environments they have nurtured. (Tr. 811:21-812:25 (Blaine Smith); 959:15-963:13 (Garrett); 1002:14-1004:3 (Wells Test.); 1047:16-25 (Reed); 882:3-883:8 (Briggs).) Most of them have children frequently on their property, and worry about safety for themselves, their grandkids, and their visitors. (Id.) They are also believe that a railroad line will degrade their land. (Tr. 813:1-9, 1002:21- 1004:3.)

NROCC was founded to oppose the Hanson Spur. (Tr. 566 (J. Smith)); (Tr. 554 (D.M. Smith)). Hancock County Commissioner Randolph Clayton testified about the elderly, retired community that would be negatively impacted by the proposed Spur. (Tr. 587 (R. Clayton)). Many NROCC members testified that their homes would be close to the Spur and that they had concerns about the noise and the negative environmental impacts of a rail spur.

NROCC's witness Dr. Erica Walker from the Community Noise Lab at the Brown University School of Public Health addressed noise concerns in a study that measured sound levels at several NROCC members' homes along the proposed Spur. (Tr. 697 (Walker)). Dr. Conner Bailey testified about how powers like eminent domain have historically been abused and have led to significant loss of land in Black communities. (Tr. 664-665 (Bailey)). In discussing the Sandersville Railroad Company's proposed use of eminent domain to construct the Hanson Spur,

Dr. Bailey highlighted the devaluation of Respondents' and Intervenor's properties.

Conclusions of Law

The Georgia Public Service Commission has jurisdiction over this proceeding pursuant to O.C.G.A. §§ 46-8-120 and 46-8-121. This matter has been assigned to the Commission's undersigned Hearing Officer for hearing and initial decision pursuant to the provisions of O.C.G.A. §§ 50-13-13 and 50-13-17.

While railroad companies have the power of eminent domain, this power is limited. Railroads derive their power of eminent domain specifically under Georgia law at O.C.G.A. § 46-8-121 which provides that railroad companies may exercise condemnation for all purposes given railroads in O.C.G.A. § 46-8-120. In considering powers of Sandersville Railroad under O.C.G.A. § 46-8-120, only O.C.G.A. § 46-8-120(4) applies here, the power "to build and maintain such additional depots, tracks, terminal facilities as may be necessary for the proper accommodation of the business of the company."

In addition, all condemnations must be for a public use. U.S. Const., Amend 5; Ga. Const. 1983 Art. I, Sec. III, Para. I; and O.C.G.A. § 22-1-2(a). "Public use is a matter of law to be determined by the court and the condemnor bears the burden of proof." O.C.G.A. § 22-1-2(a). The Commission review is limited to determining whether the purpose of the condemnation "serves a public purpose, not whether the condemnation 'best serves' the public interest." Central of Georgia Railroad Company v. Georgia Public Service Commission, 257 Ga. 217, 218 (1987).

In addition to Georgia law, Commission Rules require that the Hearing Officer make a finding of whether the proposed condemnation accomplishes a "legitimate" public purpose. Rule 515-16-16-.02. See In re: The Great Walton Railroad Company, Inc., d/b/a The Hartwell Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation, Docket 41607, Order Reversing Hearing Officer's Initial Decision, p. 4.

1. Necessary for the Proper Accommodation of the Business of the Company.

Under Georgia law, Railroads are authorized to condemn property "[t]o build and maintain such additional depots, tracks, and terminal facilities as may be necessary for the proper accommodation of the business of the company." O.C.G.A. § 46-8-121; O.C.G.A. § 46-8-120(a)(4). Respondents argue that the Railroad has failed to provide proof that the Hanson Spur is "necessary for the proper accommodation of the business of the company." Brief of Respondents,

p. 43. See also, Brief of NROCC, pp. 18-23.

First, Respondents state that the Hanson Spur project is an entirely new business and that it is entirely disconnected from and will not serve the existing Sandersville Railroad. Brief of Respondents, p. 44. Sandersville responds by stating that it is in the business of “connect[ing] industries by rail” and connecting “rail traffic with larger rail networks.” (Tr. 31:16-20 (Tarbutton)). Without the Spur, Sandersville Railroad cannot viably offer industries, companies, and farmers in East middle Georgia connection with and direct rail access to CSXT’s system. Five of Sandersville Railroad’s current and prospective customers testified they want that service, demonstrating there is market demand for the Spur. Reply Brief, p. 4. In this context, the undersigned Hearing Officer concludes that the “business of the company” is providing the transportation service of connecting industries by rail and connecting rail traffic with larger rail networks.

Second, Respondents argue that the standard for railroad condemnation is not met because the Hanson Spur is a new line likely subject to federal regulation. Brief of Respondents, p. 45. While Sandersville takes the position that the project is a “spur” that is exempt from Surface Transportation Board (“STB”) regulation, Respondents argue that under STB regulations it is a new line that is not exempt from regulation. If it is not exempt, then it would need a certificate from STB, which is not guaranteed. Sandersville responds by stating these arguments have no bearing on the issues before the Commission: Whether the line is necessary to accommodate the business of Sandersville Railroad and whether it is a public purpose. The standard that the STB would be considering is public interest, not public purpose. Reply Brief, p. 19. As STB would use a public interest test, not a public use test, in deciding whether to grant a certificate, the potential of a future STB proceeding is not determinant here.

Third, Respondents argue that the standard for railroad condemnation is not met because the Hanson Spur project is not economically feasible. Brief of Respondents, pp. 46-48. Respondents state that no economic studies have been done by the railroad and Sandersville has failed to produce evidence demonstrating that the business is economically viable. Respondents argue that an economically unviable project is not necessary to the accommodation of any business. Sandersville argues that there is no requirement that it prove the Spur will be feasible, but that it has shown that the Commission can reasonably expect it will be. Reply Brief p. 18. A project that is not possible or is doomed to fail may not be a legitimate public use or necessary to accommodate a business. But, that is not the case here. Here the project may or may not earn the return of its sunk capital investment, but it has shown that it is reasonably expected to have cash flow sufficient to continue

as an ongoing concern providing rail transportation services. Presumably, the Legislature gave railroads the power of condemnation not for the end result that a railroad company be more profitable as a business, but for the end result that a railroad provide rail services.

2. Public Use

Both the federal and Georgia constitutions require that a condemnation serve a public use. Both constitutions also sanction takings by private corporations if the future use by the public is the purpose of the taking. See *Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005); *Mims v. Macon & W.R. Co.*, 3 Ga. 333, 338 (1847). O.C.G.A. § 22-1-1(9)(A)(ii) provides that “Public use” means, *inter alia*, “[t]he use of land for the creation or functioning of public utilities.” O.C.G.A. § 22-1-1(10) defines “public utility” to include “railroads.” O.C.G.A. § 22-1-1(9)(A)(iii) provides that “Public use” also means: “The opening of roads, the construction of defenses, or the providing of channels of trade or travel.” Sandersville Railroad contends that the Hanson Spur will provide channels of trade to East middle Georgia area farmers, industries, and businesses, and will be used for the functioning of Sandersville Railroad, as a public utility. Reply Brief, p. 25.

A. Public Utility

For purposes of determining public use in Georgia, “railroads” are “public utilities” under O.C.G.A. § 22-1-1(9)(A)(ii). O.C.G.A. § 22-1-1(10). Respondents argue, however, that the Hanson Spur is not a public use, but instead is a private taking. Respondents state that Sandersville seeks to take Respondents’ property as a “mere pretext” so that it can “bestow a private benefit” upon itself and a handful of hypothetical customers, not the public. Brief of Respondents, p. 36. “Private use of land acquired by a railroad through condemnation is not allowed. OCGA § 22-1-2.” Cent. of Ga. R.R. v. Ga. Pub. Serv. Comm’n, 257 Ga. 217, 219, 356 S.E.2d 865, 866 (1987). NROCC similarly argues that the condemnation is not for a public purpose. Brief of NROCC, pp. 15-16 and 28-31.

Respondents argue that a railroad can operate as a public utility, but only “when they serve the public.” Respondents Brief, p. 41, n. 44. Sandersville notes that while the first sentence of O.C.G.A. § 22-1-1(10) contains the qualifier “which directly or indirectly serve the public,” the third sentence, which addresses railroads, does not. Reply Brief, pp. 14-15. Sandersville argues that the “serve the public” language does not apply to railroads since there is no ambiguity in O.C.G.A. § 22-1-1(10) and the literal language of the statute must, therefore, be followed. *Fid. & Deposit Co. v. Lafarge Bldg. Materials, Inc.*, 312 Ga. App. 821, 823, 720 S.E.2d 288, 290 (2011) (“[T]he

fundamental principle of statutory construction . . . requires us to follow the literal language of the statute unless it produces contradiction, absurdity or such an inconvenience as to insure that the legislature meant something else.”). Reply Brief, p. 15, n. 49.

Respondents argue that if there was not a “serve the public requirement,” a different result would have been required in the *Great Walton* case. Respondents Brief, p. 41, n. 44. In the *Great Walton* case, the Commission’s order states: “The Commission finds and concludes that since the proposed rail line will only serve a single customer, the proposed runaround, and its concomitant disruption of the status quo, serves no legitimate public purpose and is not necessary.” 41607, p.5. In its unpublished opinion affirming the Commission Order, the Georgia Court of Appeals states: “Here, there was ample evidence to support the PSC’s finding that condemnation would serve no public purpose. At the PSC hearing, evidence was presented that the proposed runaround track would serve only one customer, and that its construction and operation would endanger the members and visitors of the church and negatively impact historical preservation efforts.” Great Walton R. Co. v. Ga. Public Svc. Comm., 356 Ga. App. XXVIII (Sept. 30, 2020) (unpublished).

Sandersville argues that the *Great Walton* case is not relevant here because the asserted public purpose of the Hanson Spur differs from that alleged for the proposed runaround in *Great Walton*. See Petition for Approval to Acquire Real Estate by Condemnation, *In re: The Great Walton Railroad Company, Inc., d/b/a The Hartwell Railroad Company’s Petition for Approval to Acquire Real Estate by Condemnation*, Docket 41607, Document 169978 ¶ 8 (Oct. 27, 2017). Sandersville Railroad contends that the Spur will provide channels of trade and be the use of land for its functioning as a public utility; in *Great Walton*, the railroad alleged a need for safety improvements along its line and did not identify a public use defined in O.C.G.A. § 22-1-1. See e.g., *Id.* ¶ 7–8 Reply Brief, p. 16, n. 51.

Neither the Commission order nor the unpublished Court of Appeals decision discuss O.C.G.A. § 22-1-1(9)(A)(ii) or (10) or their meanings. In any event, the case at hand, is not a single customer case. As discussed above in the Findings of Fact, there are five customers that have entered into memoranda of understanding with Sandersville Railroad. There are three to five other customers that have also indicated their interest in utilizing the Hanson Spur if constructed. While Sandersville would not be offering its services as a common carrier, it would offer its switch services to any shipper that wants to negotiate a contract rate on mutually satisfactory terms. Given the railroad services that Sandersville proposes to provide with the Hanson Spur, the undersigned Hearing Officer concludes that the land use would be for the functioning of a “public utility” as that

term is used in O.C.G.A. § 22-1-1(9)(A)(ii).

B. Channel of Trade

O.C.G.A. § 22-1-1(9)(A)(iii) provides that “public use” also includes “the providing of channels of trade”. Respondents argue that the Hanson Spur will not provide a public use because it will not provide a channel of trade. Brief of Respondents, p. 49. See also Brief of NROCC, pp. 25-27. Respondents argue that the Hanson Spur may “expand” an existing channel of trade, but it does not “provide” one. As Sandersville points out, the statute does not state that the channels of trade must be new, exclusive, or novel to serve a “public use.” Reply Brief, p. 14.

As described in the Findings of Fact, neither Sandersville Railroad nor any other short line railroad in East middle Georgia has direct access to the CSXT rail system, which serves points and regions that Norfolk Southern does not, including parts of New York and New England. Prospective customers testified that the Hanson Spur will allow them to reach markets served by CSXT and provide a new route for these companies to deliver their goods to market. The undersigned Hearing Officer concludes that the Hanson Spur would provide a channel of trade.

C. Economic Development

In 2006, the General Assembly added a limitation to condemnation that “[in most cases] the public benefit of economic development shall not constitute a public use.” O.C.G.A. § 22-1-1(9)(A). The General Assembly enacted this limitation in response to the Supreme Court’s decision in *Kelo*, in which the Supreme Court held that economic development could, at a state’s discretion, qualify as a public use under the federal constitution. (NROCC Brief at 17). The General Assembly responded by foreclosing economic development as a basis for most condemnations and by defining public use in O.C.G.A. § 22-1-1(9)(A).

NROCC argues that the Hanson Spur’s purported provision of “secondary benefits” of economic development to the Sparta community is not a permissible public use. NROCC Brief, p. 32. See Respondents’ Brief at 28–29. Sandersville Railroad contends that the Hanson Spur will provide channels of trade and will be used for the functioning of Sandersville Railroad, as a public utility and that the principal public use of the Spur is not economic development. Any resulting economic development from the condemnation will be incidental to its primary public uses. Nothing in the statutes suggests that a proposed condemnation that anticipates the public accruing incidental economic benefits must be denied. Instead, the statute prohibits any condemnation based

upon a public purpose of economic development, excepting certain circumstances, including “[t]ransfer of property to a private entity that is a public utility.” O.C.G.A. § 22-1-1(4)(B). As previously noted, the term “public utility” includes “railroads.” O.C.G.A. § 22-1-1(10).

Respondents also argue the Supreme Court case of Kelo v. City of New London, 545 U.S. 469 (2005), requires Sandersville to have an extensive detailed plan in order to condemn property, which Hanson Spur lacks. Brief of Respondents, p. 37. Sandersville states that this requirement is not found in Kelo’s text and that the citations provided by Respondents relate to the Court’s decision to resolve the challenges by the landowners all together, rather than individually. Brief of Respondent, p. 3, n. 7. In any event, the language does not create a new requirement for a constitutional taking. Even if such a requirement did exist, the undersigned Hearing Officer concludes that in this case Sandersville’s plan is sufficiently detailed to explain what property it is requesting, what use it will be put to, and how the different parcels relate to the whole project.

D. Public Interest Generally

Respondents and NROCC have made a number of strong public interest arguments against the condemnation of their property including how it will damage their home life, community, and heritage. Respondents and NROCC argue that the Petition may be denied on these grounds just as the Commission denied the condemnation in *Great Walton* on the grounds that it served no legitimate public purpose and was not necessary because it might destroy historical landmarks. (Respondents’ Brief at 4, n. 8; NROCC’s Brief at 32).

Sandersville states that the risk to historical landmarks was not grounds for the Commission’s holding in *Great Walton*. Sandersville states that while the Commission recognized the potential “concomitant disruption” of the proposed condemnation, this language describes an effect of the condemnation; it was not a basis for the Commission’s holding. Reply Brief, pp. 10-11.

The Commission’s authority to review condemnations is limited. That authority is limited to determining whether the purpose of the condemnation “serves a public purpose, not whether the condemnation ‘best serves’ the public interest.” Central of Georgia Railroad Company v. Georgia Public Service Commission, 257 Ga. 217, 218 (1987). Unlike in the *Great Walton* case, where several reasonable alternatives to the Railroad’s proposal existed, no serious alternatives, other than simply not building the Hanson Spur, were presented in this case. As the Hanson Spur is necessary for the proper accommodation of the business of Sandersville Railroad and as neither O.C.G.A. §

22-1-1(9)(A)(ii) nor (iii) appear to give the Commission the authority to consider whether the condemnation 'best serves' the public interest, the undersigned Hearing Officer concludes that the Commission does not have the authority to deny the condemnation on these grounds.

3. Notice

NROCC argues that the Sandersville Railroad Company's Petition should be denied because it failed to provide adequate notice of the legal bases upon which it seeks to take property to build the Hanson Spur in violation of the due process rights of Respondents and NROCC. NROCC states that Sandersville did not provide the particular bases for its arguments that the project was a public use, and did not cite to either O.C.G.A. § 22-1-1 (9)(A)(ii) or (iii), in either its Petition or Amended Petition. NROCC argues that Sandersville's Petitions focused on economic benefits did not mention "channels of trade" until rebuttal testimony was filed two months prior to the hearing date and did not mention the "creation or functioning of public utility" until the hearing itself. NROCC Brief, pp. 14-15.

Sandersville states that it did not change the legal grounds for its proposed condemnation mid-stream. Reply Brief, p. 22. Sandersville notes that its Petitions: Did state its intent to build a railroad on the parcels and that the railroad would serve customers; it did allege a public purpose; and, it did cite to O.C.G.A. 46-8-120 and 121. Sandersville's Petitions did not cite to O.C.G.A. 22-1-1; however, O.C.G.A. 46-8-121, which was cited, provides that condemnation is done in the manner provided by Title 22. The Procedural and Scheduling Order issued in this matter approximately 6 months prior to the hearing also cited to O.C.G.A. 46-8-120 and 121, as well as Commission rules 515-16-16-.01 et seq., which states that "public purpose" is the legal standard for approval. Given that all parties in this proceeding are represented by counsel, and given that at no time after the pre-filing of testimony or during the oral hearing did counsel indicate any lack of notice or a need to admit additional evidence, adequate notice was provided.

4. Conclusion

I therefore find and conclude that the proposed condemnation by Sandersville Railroad serves a legitimate public purpose and is necessary for the proper accommodation of the business of the company. The Petition of Sandersville Railroad, as amended, is granted.

WHEREFORE, The Hearing Officer hereby adopts the findings and conclusions set forth within this Order.

ORDERED FURTHER, that this Order is issued as an Initial Decision under O.C.G.A. § 50-13-17(a). In the absence of an application to the Commission within 30 days from the date of notice of this Initial Decision for review, or an order from the Commission within such time for review on its motion, this Initial Decision shall, without further proceedings, become the decision of the Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as the Hearing Officer or the Commission may deem just and proper.

SO ORDERED, this 1st day of April, 2024.


Thomas K. Bond, Hearing Officer
Georgia Public Service Commission

**BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF GEORGIA**

DOCKET NO. 45045 In re: Sandersville Railroad Company's Petition For Approval to Acquire Real Estate by Condemnation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **INITIAL DECISION** was filed with the Executive Secretary of the Georgia Public Service Commission, and a copy of same was served upon all parties listed below via hand or electronic delivery as indicated, or by depositing same in the United States mail with sufficient postage thereon to ensure delivery and addressed as follows:

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This 1st day of April 2024.



Thomas K. Bond, Hearing Officer
Georgia Public Service Commission
244 Washington St. SW
Atlanta, Ga 30334

EXHIBIT 3

NOTE: SOURCE OF RAIL ALIGNMENT AND DRAWING DATA IS FROM SKETCH AND FIELD DATA.

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SCALE IN FEET: 1"=1500'

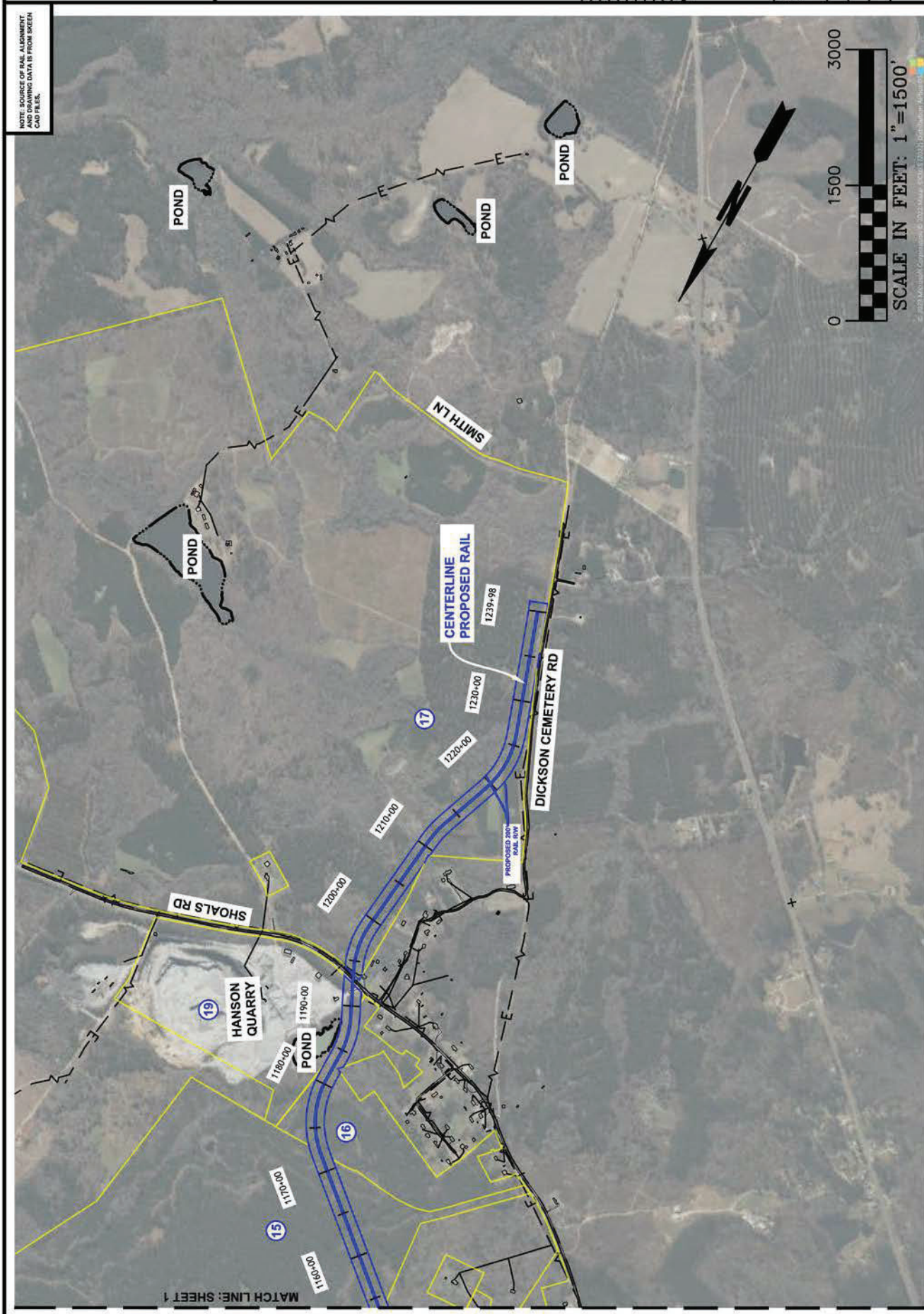
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ALIGNMENT FOR PROPOSED RAIL HANCOCK COUNTY, GEORGIA

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NOTE: SOURCE OF RAIL ALIGNMENT AND DRAWING DATA IS FROM SCREEN CAD FILES.



200 NORTH COBB PARKWAY, N.W., SUITE 415
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PHONE: (770) 971-5407 FAX: (770) 971-0430

ALIGNMENT FOR PROPOSED RAIL HANCOCK COUNTY, GEORGIA

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SHEET TITLE
RAIL ALIGNMENT
SHEET 2

DRAWN BY
TBA

CHECKED BY
RDM

SCALE
1"=1500'

DATE
12/01/2022

PROJECT NUMBER
1992.001

DRAWING NUMBER
P-2

SHEET 2 OF 2