Ernest M. Smith (1911-1992)
A. J. Welch, Jr. (1944-2018)
John P. Webb, PC
William A. White, PC
Andrew J. Welch, III, PC (NY & GA)
J. Byrd Garland
L. Scott Mayfield
Marc A. Avidano (FL & GA)
David M. Waldroup
Andrew J. Gebhardt
R. Brian Strickland
Elizabeth P. O'Neal
Megan Murren Rittle (GA & AL)
Lajuana C. Ransaw
Warren M. Tillery
Orion G. Webb

SMITH WELCH
WEBB & WHITE, LLC
ATTORNEYS AT LAW
TRUSTED SERVICE FOR A LIFETIME

Grant E. McBride
Bianca K. Davis
Miranda N. Hanley
Casey C. Crumbley (SC & GA)
Brandon F. Palmer

ASSOCIATES
M. Chase Collum
Brooke A. White
Jeremy A. Trimble (FL & GA)
Christopher T. Webb
Susana Gude-Rodriguez

OF COUNSEL
Amy M. Fletcher

2200 KEYS FERRY COURT ▪ P.O. BOX 10 ▪ MCDONOUGH, GA 30253
Telephone: 770-957-3937 ▪ Facsimile: 770-957-9165
www.smithwelchlaw.com

April 26, 2023

VIA ALTERNATIVE ELECTRONIC FILING

Ms. Sallie Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334
stanner@psc.ga.gov

Re: ***In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation, Docket No. 45045***

Dear Ms. Tanner:

Please find enclosed the prospective *Intervenors Robert Donald Garrett, Sr. and Sarah Veazey Garrett's Objection to Petitioner Sanderville Railroad Company's Proposed Procedural and Scheduling Order and Notice of Hearing* and *Attachment A – [Proposed] Procedural and Scheduling Order and Notice of Hearing* for filing in the above-styled proceeding. As required by the electronic filing procedures, a physical copy of this filing will be mailed to the Commission via U.S. Express mail, postage pre-paid. Thank you for your attention to this matter.

Please let me know if you have any questions or require additional materials.

Sincerely,

Grant E. McBride
Counsel for Robert Donald Garrett Sr. and Sarah Veazey Garrett

Enclosures

{Doc: 03315116.DOCX}

cc: Nancy Gibson (via email)
L. Craig Dowdy (via email)
Steven L. Jones (via email)
Robert S. Highsmith, Jr. (via email)
Laura E. Flint (via email)

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

Sandersville Railroad Company Hancock County, Georgia **In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation**	Docket No.: 45045

INTERVENORS ROBERT DONALD GARRETT SR. AND SARAH VEAZEY GARRETT'S OBJECTION TO PETITIONER SANDERSVILLE RAILROAD COMPANY'S PROPOSED PROCEDURAL AND SCHEDULING ORDER AND NOTICE OF HEARING

On April 5, 2023, pursuant to O.C.G.A. §§ 46-2-59 and 50-13-14 and Rule 515-2-1-.06 of the Georgia Public Service Commission (the "Commission"), Robert Donald Garrett Sr. ("Don") and Sarah Veazey Garrett ("Sally") (together, the "Garretts") applied for leave to intervene in the above-captioned proceeding (the "Proceeding"). The Garretts own the property that is the subject of the Proceeding.

On April 18, 2023, Sandersville Railroad Company ("Sandersville Railroad") filed a Proposed Procedural and Scheduling Order and Notice of Hearing (the "Sandersville Railroad Proposed Order"). For the following reasons, the Garretts oppose the Sandersville Railroad Proposed Order and respectfully request that the Commission deny it and adopt a procedural order that provides for full development of the factual and legal issues raised by the Petition for Approval to Acquired Real Estate by Condemnation (the "Petition") and protects the rights of the Garretts, and all parties to the Proceeding. An alternative Proposed Procedural and Scheduling Order and Notice of Hearing is attached to this Objection as Attachment A.

A. The schedule proposed by Sandersville Railroad is unrealistic, does not conform with statutory requirements, will not result in an adequate record, and is inconsistent with constitutional due process standards.

1. This case concerns the rights of the Garretts, and many other private property owners, to keep, preserve and use their own family land as they see fit, and to preserve it for their heirs—whole, complete, and valuable. The property has been in R. Donald Garrett's family for generations; Don has lived there for all but four of his 75 years; he and Sally raised their sons there and intend to give the property to them. The proposed condemnation will bisect the Garretts' land, severely degrade their use and access, destroy the property's emotional and generational significance, and irretrievably devalue its inherent worth.

2. This case presents significant questions as to whether Sandersville Railroad is taking the Garretts' and others' property for private or public use, and whether the condemnation is necessary.

3. A private railroad company's power to acquire land by condemnation is limited to uses that are public. *See* Ga. Comp. R. & Regs. 515-16-16-.02 ("the hearing officer . . . [will] determine if there is a *legitimate* public purpose for the proposed condemnation" (emphasis added)). Private use of land "acquired by a railroad through condemnation is not allowed." *Cent. of Ga. R.R. v. Ga. Pub. Serv. Comm'n*, 257 Ga. 217, 218, 356 S.E.2d 865, 866 (1987).

4. To determine if condemnation by a private railroad company, including for a spur track, serves a public use rather than a private use, this Commission and Georgia courts consider such factors as whether the railroad in reality serves just one private entity; whether the public will be able to use the railroad; whether the result of the condemnation will present safety hazards to the public; whether the planned practices of the planned railroad conform to best practices; and the impact on the local community. *City of Atlanta v. Atlanta Gas Light Co.*, 144 Ga. App. 157, 158, 240 S.E.3d 730, 731 (1977); *Bradley v. Lithonia & A.M. Ry. Co.*, 147 Ga. 22, 92 S.E. 539 (1917);

The Great Walton Railroad Co. v. Ga. Pub. Serv. Comm'n, No. 2019-CV-316156 (Ga. Super. Ct. Nov. 1, 2019); Petition of the Great Walton R.R. Co., Inc. d/b/a the Hartwell R.R. Co. for Approval to Acquire Real Estate by Condemnation., No. 41607 (Aug. 24, 2018).

5. Even if the Commission determines that there exists a legitimate public purpose, the Commission must consider whether the taking is necessary to achieve that legitimate public purpose, because a condemning authority "can only take such property as is useful, needful, and necessary for public purposes." *Banks v. Ga. Power Co.*, 267 Ga. 602, 604, 481 S.E.2d 200, 203 (1997). The determination of necessity is "limited to the amount that is reasonably necessary under all the facts and circumstances regarding the particular matter under consideration." *Id.* (citation omitted). For instance, this Commission and reviewing Georgia courts have considered whether the status quo is in fact preferable to a taking by a private railroad company, and whether there are better alternatives to the nature of the planned condemnation. Petition of the Great Walton R.R. Co., Inc. d/b/a the Hartwell R.R. Co. for Approval to Acquire Real Est by Condemnation., No. 41607 (Aug. 24, 2018); *The Great Walton Railroad Co. v. Ga. Pub. Serv. Comm'n*, No. 2019-CV-316156 (Ga. Super. Ct. Nov. 1, 2019).

6. For the Commission to make a sound and just decision as to whether Sandersville Railroad's proposed taking of the Garretts' and others' land is for a legitimate public use and is necessary, the Commission must consider "all the facts and circumstances regarding the particular matter under consideration." *Banks*, 267 Ga. at 604 (citation omitted). In other words, this determination should be based on a robust factual record and not on untested assertions made by the proposed condemnor. The Parties and Commission must therefore have the time and opportunity to develop the record by discovering facts, obtaining expert testimony, and probing the veracity of the same.

7. The Commission has the discretion to permit the parties to engage in discovery. It is explicitly authorized to permit Commission employees and agents to take discovery. O.C.G.A. § 46-2-57(a) ("In any case pending before it, the commission . . . is authorized to issue an order permitting its employees and agents to take depositions and otherwise obtain discovery of any matter, not privileged, which is relevant to the subject matter involved in the investigation, proceeding, or petition before the commission, in the same manner prescribed in Chapter 11 of Title 9 for discovery in civil actions."). The Commission is otherwise authorized to prescribe rules of procedure, and to "exercise such discretion as will facilitate its efforts to ascertain the facts bearing upon the right and justice of the matters before it." O.C.G.A. § 46-2-51. In that regard, nothing in the Commission's enabling statutes relating to investigations and hearings and nothing in the Commission's rules relating to procedures for rail condemnation petitions prevents the Commission from exercising its discretion to order the parties to engage in discovery. *See* O.C.G.A. § 46-2-50-59 and Ga. Comp. R. & Regs. 515-16-16. This is a case in which the Commission should seek discovery, and allow the Parties and permitted intervenors to do the same.

8. In its Petition, Sandersville Railroad asserts facts to demonstrate that it has a right to condemn the Garretts' property. Petition ¶¶ 1-17 (listing assertions that the Hanson Spur is a business necessity; will serve multiple customers; will reduce truck traffic on Hancock County roads; the train will make one trip per day and go twenty miles an hour; and the Sandersville Railroad already has agreements with other property owners). Under Georgia law, the condemnor has the burden to prove that the condemnation is for a public purpose. See *City of Stockbridge v. Meeks*, 283 Ga. App. 343, 345, 641 S.E.2d 584, 586 (2007) ("[T]he burden to show a taking for a public purpose lies with the condemnor, not the condemnee."). As such, the railroad here has the burden of demonstrating that these assertions are true, and the condemnee should have the right to

test whether these assertions are accurate, as well as to challenge whether these assertions, even if they are true, are sufficient to warrant the Commission's approval of the proposed condemnation. It would be unjust to approve the taking by a private railroad company of family land belonging to the Garretts or any other property owners without fully testing the factual basis of the proposed condemnation and the legal sufficiency of the proposal.

9. Therefore, the Commission should order its employees and agents, as well as the parties, to engage in discovery to ascertain facts bearing on the right of Sandersville Railroad to exercise the power of eminent domain and the justice of permitting Sandersville Railroad to take the Garretts' and others' land.

10. Additionally, expert testimony will be essential in guiding the Commission in determining whether the condemnation proposed by Sandersville Railroad is a public use and is necessary, that is, if it is taking only such property as is "useful, needful, and necessary for public purposes," based on the circumstances of this case. *Banks*, 267 Ga. at 604.

11. The Garretts will need time to identify and retain an expert in this proceeding. Moreover, the Petition lists 19 property owners and easement holders whose property lies in the path of the train, and who have significant interests in the outcome of this proceeding. These owners may wish to intervene and will also need time to develop their testimony and possibly identify and retain their own experts. They must have an opportunity to be heard and meaningfully participate in the proceeding.

12. The proposed schedule in the Sandersville Railroad Proposed Order is insufficient for the requirements of this case. A sufficient schedule will provide at least 11 months for this proceeding.

13. The proposed schedule in the Sandersville Railroad Proposed Order also does not include the 45 days for negotiations set forth in statute. *See* Ga. Comp. R. & Regs. 515-16-16-.02. ("If the hearing officer cannot assist the parties in mediating a purchase agreement for such property proposed for condemnation within forty five (45) days after the filing of such petition, then the hearing officer will set the matter down for hearing to determine if there is a legitimate public purpose for the proposed condemnation.") No such mediation process has yet been initiated.

B. Sandersville Railroad proposes procedural rules in order to exclude people whose properties Sandersville Railroad seeks to take.

14. Though Sandersville Railroad has thus far petitioned this Commission to condemn only the Garretts' property, it needs permission to condemn several more properties, in actions involving many more families, before it can build the Hanson Spur. *See* Petition Exhibit C.

15. The Commission should not exercise its discretion to disadvantage other property owners and community members by (as Sandersville Railroad proposes) requiring applicant intervenors, as a prerequisite to consideration for permission to intervene, to explain (1) why other parties to the Proceeding do not adequately represent their interests and (2) their intention to submit direct testimony, including by whom and on what subject. *See* Sandersville Railroad Proposed Order at 2. The rules of this Commission do not require the Commission to demand such showings. *See* O.C.G.A. § 46-2-59(e)(2) ("[T]he hearing officer *may* consider whether the person's interest is adequately represented by other parties . . . ." (emphasis added)).

16. Other property owners and community members have individual concerns, and their properties are unique. The owners of property targeted for condemnation by Sandersville Railroad are not like rate payers in utility rate proceedings: no one person with legal, property and other interests can adequately represent another person with legal, property or other interests in such a highly specific, extremely local, incredibly disruptive condemnation action such as this.

17. Limiting or conditioning the participation of individuals or entities whose property will be directly affected by the proposed condemnation, as Sandersville Railroad proposes, would create significant due process issues. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"). *See also United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993) ("[I]ndividuals must receive notice and an opportunity to be heard before the Government deprives them of property.") Put simply, these individuals and entities will likely have significant property interests at issue in this proceeding, especially if the Commission's factual findings or legal conclusions were to have a preclusive effect on subsequent condemnation attempts by Sandersville Railroad. In such circumstances, the Fourteenth Amendment demands a robust process guaranteed to minimize the threat of erroneous deprivation of these interests; excluding or minimizing the participation of those whose property will be affected by this proceeding does not meet that standard.

18. The Commission should exercise its discretion liberally to allow those with legal, property and other interests in the Proceeding to participate directly in the Proceeding as intervenors. The Commission should only require intervenors to demonstrate their legal, property or other interest in the Proceeding, and that they meet the requirements of O.C.G.A. § 46-2-59(c), as a prerequisite to consideration for permission to intervene.

19. In light of these considerations, the schedule proposed by the railroad is unrealistic, inconsistent with the requirements of the Commission's hearing procedure, will not result in a record that can guide the Commission to an accurate decision, and its adoption would be inconsistent with the constitutional standards for due process given the property interest at stake.

WHEREFORE the Garretts respectfully request that this Commission, either through the Hearing Officer or its own authority, enter an order (i) rejecting the Sandersville Railroad Proposed Order, and (ii) adopting a Procedural and Scheduling Order and Notice of Hearing substantially in the form of the alternative Proposed Procedural and Scheduling Order and Notice of Hearing attached to this Objection as Attachment A.

DATED this 26th day of April, 2023.

Grant E. McBride
Georgia Bar No. 109812
SMITH, WELCH, WEBB & WHITE, ATTORNEYS AT LAW
2200 Keys Ferry Court
P.O. Box 10
McDonough, GA 30253
Tel.: 770-957-3937
Fax: 770-957-9165
Email: gmcbride@smithwelchlaw.com

Counsel for
Robert Donald Garrett Sr. and Sarah Veazey Garrett

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April, 2023, a copy of the foregoing *Intervenors Robert Donald Garrett Sr. and Sarah Veazey Garrett's Objection to Petitioner Sandersville Railroad Company's Proposed Procedural and Scheduling Order and Notice Of Hearing* and *Attachment A – [Proposed] Procedural and Scheduling Order and Notice Of Hearing* has been served via electronic mail and U.S. First-Class Mail on the following pursuant to GA. COMP. R. & REGS. 515-16-16-.02; 515-2-1-.04(4)(b), (3):

VIA Electronic Mail and U.S. First-Class Mail:

L. Craig Dowdy
Steven L. Jones
TAYLOR ENGLISH DUMA, LLP
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339
Telephone: (770) 434-6868
Facsimile: (770) 434-7376
cdowdy@taylorenglish.com
sjones@taylorenglish.com

Robert S. Highsmith, Jr.
Laura E. Flint
HOLLAND & KNIGHT LLP
1180 West Peachtree Street NW
Suite 1800
Atlanta, Georgia 30309
Telephone: (404) 817-8500
Facsimile: (404) 881-0470
robert.highsmith@hklaw.com
laura.flint@hklaw.com

Counsel for Petitioner Sandersville Railroad Company

Nancy Gibson
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334
Telephone: (404) 463-0882
Facsimile: (770) 342-3054
E-mail: ngibson@psc.ga.gov

Designated Hearing Officer

Sallie Tanner
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334
Telephone: (404) 656-4501
Facsimile: (404) 656-2341
E-mail: stanner@psc.ga.gov

Executive Secretary of the Public Service Commission

DATED this 26th day of April, 2023.

Grant E. McBride
Georgia Bar No. 109812

SMITH, WELCH, WEBB & WHITE ATTORNEYS AT LAW
2200 Keys Ferry Court
P.O. Box 10
McDonough, GA 30253
Tel.: 770-957-3937
Fax: 770-957-9165
Email: gmcbride@smithwelchlaw.com

Counsel for
R. Donald Garrett Sr. and Sarah Veazey Garrett