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

VERIFIED APPLICATION FOR LEAVE TO INTERVENE
OF MARVIN SMITH, JR. AND PATRICIA SMITH

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"), Marvin Smith, Jr. ("Marvin") and Patricia Smith ("Pat") (together, the "Smiths") respectfully request that the Commission grant their Verified Application to Intervene in the above-captioned proceeding (the "Proceeding"). The Smiths own a parcel of land that is targeted for eventual acquisition by Sandersville Railroad Company ("Sandersville Railroad") in its Petition for Approval to Acquire Real Estate by Condemnation that is the subject of the Proceeding. The Smiths have interests of the highest order—the preservation of their family property—and they thus fit the criteria for intervention set forth in Georgia statutes and this Commission's administrative provisions.

In support of this Application, the Smiths state as follows:

FACTS PERTAINING TO THE SMITHS' INTEREST IN THE PROCEEDING

1. On March 8, 2023, the Sandersville Railroad Company ("Sandersville Railroad") filed the Petition with the Commission.

2. The Petition sought approval pursuant to O.C.G.A. §§ 46-8-120 and 46-8-121 to acquire by condemnation land that is owned by Robert Donald Garrett Sr. and Sarah Veazey Garret (the "Garretts"). The Garretts' land is identified as Hancock County Tax Parcel Number 186 013,

which corresponds to 1335 Shoals Road, Sparta, Georgia 31087 (the "Garrett Parent Tract"). Petition 4.

3. The Petition sought approval to condemn the Garrett Parent Tract to build an industrial spur (the "Hanson Spur") between the CSX line near Sparta, Georgia, and a large open-air mine called the Hanson Quarry. Petition 1.

4. In the Petition, Sandersville Railroad asserts that it will require 18 parcels of right of way for the Hanson Spur, including the parcel belonging to the Smiths (the "Marvin and Pat Smith Tract"). Petition 3; Petition Exhibit "B" at 1; Petition Exhibit "C" at 1 ("Parcel 7: Marvin Smith, Jr.").

5. Marvin's family has owned the Marvin and Pat Smith Tract for many generations, and the familial significance of their tract and other surrounding tracts is profound. The Marvin and Pat Smith Tract was once part of a cotton plantation on which Marvin's great grandmother was born a slave. Marvin's grandfather purchased a large tract of the land in the 1920's, and he and his wife Helen, Marvin's grandmother, farmed the land. When Marvin's grandfather died, he left a portion of the family land to Marvin's father, admonishing him, and his children, to keep it in the family—and Marvin has. His cousins have also kept their parcels in the family, whole and complete, as a promise to the next generations of Smiths. In all, six connected parcels of land in Sparta are owned by members of the Smith family, and Sandersville Railroad wants to condemn five of them for the Hanson Spur project.

6. Marvin was raised on the Marvin and Pat Smith Tract and nearby Smith parcels. The proposed condemnation will directly and negatively affect Marvin and Pat's enjoyment and use of the Marvin and Pat Smith Tract. Marvin and Pat also intend to use the Marvin and Pat Smith

Tract in the future in ways that will be directly and negatively affected by the proposed condemnation of the Marvin and Pat Smith Tract.

7. The Sandersville Railroad served the Petition on the Garretts on March 10, 2023.

8. On March 24, 2023, the Commission appointed Nancy Gibson as the Hearing Officer to preside over the Proceeding pursuant to O.C.G.A. § 46-2-58.

9. To the best of the Smiths' knowledge and belief, neither the Commission nor Hearing Officer Gibson has issued a published notice of the Proceeding nor entered any procedural or scheduling orders.

GROUNDS FOR INTERVENTION

10. The Commission or the Hearing Officer should grant this Application for five reasons. First, the Smiths have a legal, property, or other interest of the highest order. Second, no other party can adequately protect the Smiths' interests. Third, their Application is timely. Fourth, the Smiths' proposed intervention presents identical issues of law and fact as those already raised by the Petition. Finally, because the resolution of the Proceeding will directly affect the ability of the Smiths to protect their interests in their property in the future, to deny the Smiths the right to participate fully in the Proceeding would violate their due process rights.

The Smiths Have Important Legal, Property, or Other Interests

11. Intervention before the Commission is governed by O.C.G.A. § 46-2-59 and 50-13-14, and Ga. Comp. R. & Regs. 515-2-1-.06. Under the relevant portion of O.C.G.A. § 46-2-59, the Commission or a hearing officer shall only permit a person to intervene who "demonstrates a legal, property, or other interest in the proceeding. In determining whether to permit intervention, the hearing officer may consider whether the person's interest is adequately represented by other

parties and whether the intervention will unduly delay the proceedings or prejudice the rights of other parties." O.C.G.A. § 46-2-59(e)(2).

12. Because they own the Marvin and Pat Smith Tract, the Smiths have a legal and property interest in the Proceeding that is of historic and continuing importance, and, as such, they meet Georgia's standards for intervention in this Proceeding.

No Other Party Can Adequately Protect the Smiths' Interests

13. No other parties can adequately represent the Smiths' interests in the Proceeding. To meet this standard, an intervenor need only show that his or her interests "may be" inadequately protected, a burden that is "minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972); s*ee also Sw. Ga. Prod. Credit Ass'n v. Wainwright*, 241 Ga. 355, 356, 245 S.E.2d 306, 307 (1978) (intervention was proper when intervenor had a claim adverse to the opposing party involving the subject matter of the pending suit).

14. As the sole owners of the Marvin and Pat Smith Tract, no other parties have an incentive to adequately protect the Smiths' interests. Their status as the owners of the Marvin and Pat Smith Tract deserves vigorous legal protection. They also have a claim adverse to Sandersville Railroad involving the subject matter of the pending Proceeding—namely, they wish to fully protect their interests in the Marvin and Pat Smith Tract and actively assert their rights under Georgia law in the Proceeding. They therefore meet this "minimal" burden.

This Application is Timely

15. O.C.G.A. § 46-2-59(c) provides in relevant part that "[a]ny other person desiring to intervene must file an application for leave to intervene within 30 days following the first published notice of the proceeding."

16. As noted above, neither the Commission nor Hearing Officer Gibson has issued a public notice of the Proceeding.

17. The Smiths have acted promptly in filing this Application, doing so before the Commission took any action beyond assigning the Hearing Officer. Neither the Commission nor the Hearing Officer has issued a procedural or scheduling order. As such, the Commission or Hearing Officer's grant of this Application will not "unduly delay the proceedings or prejudice the rights of other parties." O.C.G.A. § 46-2-59(e)(2).

The Smiths Will Address the Central Issue in the Proceeding

18. The purpose of the Smiths' intervention warrants the grant of this Application. The Smiths desire to intervene in the Proceeding to protect their interests, including but not limited to protecting their rights to receive notice of any action in the Proceeding; present evidence, provide testimony, and cross-examine witnesses; submit briefs; participate in any Commission-ordered mediation, hearings, or other proceedings; and be heard in oral argument.

19. Their interest in this Proceeding correlates with the sole issue in this case, namely, whether the Petition meets the standards for the use of eminent domain under Georgia law. As such, the Smiths present questions of law and fact identical to those raised by the Petition and their participation will not introduce any issues unrelated to those already raised by the Petition.

Denying the Smiths' Intervention May Violate Due Process

20. Finally, to deny the Smiths full participation in the Proceeding may violate their due process rights. Limiting or conditioning the participation of individuals or entities whose property will be directly affected by Sandersville Railroad's proposed condemnations 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.'" (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965))); *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.")

21. According to Sandersville Railroad's own assertions, the Marvin and Pat Smith Tract would be included in subsequent condemnation attempts by Sandersville Railroad. Therefore, the Smiths have significant property interests at issue in this proceeding, especially if there is any possibility that the Commission's factual findings or legal conclusions regarding Sandersville Railroad's petition to condemn the Garrett Parent Tract could have a preclusive effect on subsequent condemnation attempts by Sandersville Railroad. *See Bd. of Pub. Safety v. Jordan*, 252 Ga. App. 577, 584, 556 S.E.2d 837, 843 (2001) (recognizing "the preclusive effect of the factual findings entered by [a] hearing officer" that are ratified by the relevant agency); *see also Forsyth Cnty. v. Martin*, 279 Ga. 215, 217, 610 S.E.2d 512, 515–16 (2005) (holding Superior Court's affirmance of administrative law judge's fact determination that a county was an owner of a dam collaterally estopped the county from relitigating its ownership in subsequent suit by property owners to require county to assume ownership, repair, and maintenance of the dam).

22. That is, it is likely that important legal and factual issues that would arise in any proceeding by Sandersville Railroad to acquire the Smiths' property will be decided in the Proceeding. The Smiths should have a say in the resolution of those issues. In such circumstances, the Fourteenth Amendment demands a robust process guaranteed to minimize the threat of erroneous deprivation of these interests; excluding the Smiths from full participation in the Proceeding does not meet that standard.

REQUEST FOR RELIEF

WHEREFORE, the Smiths respectfully request that the Commission grant their Verified Application for Leave to Intervene in the Proceeding as a party, with full rights of participation as provided by the Commission's Rules of Practice and Procedure and appropriate sections of the Georgia Code on all issues of law and fact to be developed during the Proceeding. The Smiths further respectfully request that they be placed on the Commission's official service list to receive copies of all notices, pleadings, orders and other documents that are submitted or otherwise made available in the Proceeding. All such notices, pleadings, correspondences, orders and other documents should be served on the Smiths and their counsel as follows:

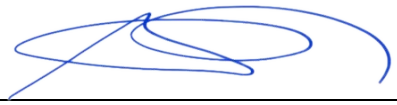
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DATED this 2nd day of May, 2023.



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Signed digitally pursuant to Ga. Code Ann. § 10-12-7

**Pro hac vice* applications to be filed

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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

VERIFICATION OF APPLICATION FOR LEAVE TO INTERVENE

Grant E. McBride personally appeared before the undersigned Notary Public and stated under oath that he is an authorized representative of Marvin Smith, Jr. and Patricia Smith in this matter and the facts contained in the foregoing *Verified Application for Leave to Intervene* are true and correct to the best of his information, knowledge and belief.

This 2nd day of May, 2023.

Grant E. McBride

Counsel for Intervenors
Marvin Smith, Jr. and Patricia Smith

Sworn to and subscribed
before me this 2nd day
of May, 2023.

Shannon DuCray
Notary Public
My Commission Expires: 4-12-26

SHANNON DUCRAY NOTARY PUBLIC HENRY COUNTY, GEORGIA My Comm. Expires June 12, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2023, a copy of the foregoing *Verified Application for Leave to Intervene* 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):

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Executive Secretary of the Public Service Commission

DATED this 2nd day of May, 2023.



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Signed digitally pursuant to Ga. Code Ann. § 10-12-7