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 HERUS ELLISON GARRETT

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"), Herus Ellison Garrett ("Ellison") respectfully requests that the Commission grant his Verified Application to Intervene in the above-captioned proceeding (the "Proceeding"). Ellison owns an undivided 25% share of a parcel of land targeted for eventual acquisition by Sandersville Railroad Company in its Petition for Approval to Acquire Real Estate by Condemnation that is the subject of the Proceeding. Each of his siblings, who are also seeking to intervene, own the remainder of the undivided shares of this parcel. Ellison has interests of the highest order—the preservation of his family property—and he thus fits the criteria for intervention set forth in Georgia statutes and this Commission's administrative provisions.

In support of this Application, Ellison states as follows:

FACTS PERTAINING TO ELLISON'S 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 Garrett (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 one parcel belonging to Ellison and his three siblings, who are related to the Garretts (the "Garrett Siblings Tract"). Petition 3; Petition Exhibit "B" at 1; Petition Exhibit "C" at 2 ("Parcel 14: "Sally G. Wells, Verne Kennedy Hollis, Ellison Garrett and Donna Garrett").

5. Ellison and his siblings, Sally G. Wells, Donna N. Garrett, and Verne Kennedy Hollis share ownership in the Garrett Siblings Tract. Each owns 25% of the property.

6. Ellison and his siblings are Don Garrett, Sr.'s nieces and nephew. As discussed in the Garretts' application to intervene in the Proceeding, the Garretts' land has been in their family since just after the Civil War.

7. All of the siblings live in or near Sparta. None currently live on the Garrett Sibling Tract, but they use it frequently for family gatherings and recreation. The Garretts' ancestral home is located on the Garrett Siblings Tract.

8. The siblings recently deeded a small portion of the property to Verne's daughter, who built a home on the property. While Verne's daughter's property is not targeted for condemnation, the railroad track as currently mapped will run just a few hundred feet from her home.

9. Among the siblings, Ellison spends the most time on the Garrett Siblings Tract as its caretaker. He also uses the property to hunt.

10. Ellison and his siblings plan to leave the Garrett Siblings Tract to their children as an inheritance, and they wish for the property to remain whole and intact.

11. Ellison enjoys and makes use of the Garrett Siblings Tract, and the proposed condemnation will directly and negatively affect his enjoyment and use of the Garrett Siblings Tract. Ellison also intends to use the Garrett Siblings Tract in the future in ways that will be directly and negatively affected by the proposed condemnation of the Garrett Siblings Tract.

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

13. The Commission docket for the Proceeding is Docket #45045.

14. 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.

15. On April 5, 2023, the Garretts filed an application to intervene in the Proceeding.

16. On May 2, 2023, the Garretts answered the Petition.

17. On May 2, 2023, Marvin Smith, Jr. and Patricia Smith, owners of Parcel 7 as identified in Exhibit C of the Petition, and William Blaine Smith and Helen Diane Smith, owners of Parcels 8, 10 and 11 as identified in Exhibit C of the Petition (together, "the Smiths") filed applications to intervene in the Proceeding.

18. On May 18, 2023, the Hearing Officer filed a Procedural and Scheduling Order and Notice of Hearing ("Scheduling Order"). The Scheduling Order set a hearing in the Proceeding for November 27–28, 2023.

19. On June 1, 2023, Sandersville Railroad notified the Commission, the Garretts, and the Smiths that legal notice of hearing would be published in the Fulton County Daily Report on June 2, 2023, and in the Atlanta Journal Constitution and The Sparta Ishmaelite on June 4, 2023.

20. According to the Scheduling Order and O.C.G.A. § 46-2-59(c), applications for intervention in the Proceeding are due 30 days from first date of publication of notice. Scheduling Order 1(a).

21. Thirty days from June 2, 2023 is July 2, 2023, which is a Sunday. Therefore, applications for intervention in the Proceeding are due July 3, 2023. *See* O.C.G.A. § 9-11-6(a) and § 1-3-1(d)(3).

GROUNDS FOR INTERVENTION

22. The Commission or the Hearing Officer should grant this Application for five reasons. First, Ellison has a legal, property, or other interest of the highest order. Second, no other party can adequately protect Ellison's interests. Third, his Application is timely. Fourth, Ellison's 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 Ellison to protect his interests in his property in the future, to deny Ellison the right to participate fully in the Proceeding would violate his due process rights.

Ellison Has Important Legal, Property, or Other Interests

23. Intervention before the Commission is governed by O.C.G.A. §§ 46-2-59 and 50-13-14, Ga. Comp. R. & Regs. 515-2-1-.06, and the Scheduling Order. 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." O.C.G.A. § 46-2-59(e)(2).

24. Because he owns 25% of the Garrett Siblings Tract, Ellison has a legal and property interest in the Proceeding that is of historic and continuing importance, and, as such, he meets Georgia's standards for intervention in this Proceeding.

No Other Party Can Adequately Protect Ellison's Interests

25. 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 Proceeding or prejudice the rights of other parties." O.C.G.A. § 46-2-59(e)(2). The Scheduling Order requires that applicants "identify other intervening Parties or intervening party applicants whose interests are similar to the applicant along with an explanation of why the identified intervening Parties or intervening Party applicant will not adequately represent the applicant's interest[.]" Scheduling Order 1(b).

26. No other parties can adequately represent Ellison's 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); *see 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).

27. Ellison's status as sole owner of a unique portion of the Garrett Siblings Tract deserves vigorous legal protection. To be sure, other property owners whose property is targeted for condemnation by Sandersville Railroad, and who have applied or may apply to intervene in the Proceeding, have similar interests to Ellison in that their property, too, will be taken against their will by Sandersville Railroad. However, that is where the similarity ends. Every piece of real property is unique. *See Cobb Cnty. Bd. of Tax Assessors v. Sibley*, 244 Ga. 404, 404, 260 S.E.2d

313, 315 (1979) (finding that the uniqueness of land affects its value). *See also Focus Ent. Int'l, Inc. v. Partridge Greene, Inc.*, 253 Ga. App. 121, 127, 558 S.E.2d 440, 446 (2001) (finding that "[l]and, under Georgia law, is deemed sufficiently unique that it is entitled to equitable remedies" to protect interests in land). Because land is unique, physical and environmental impact to each parcel may vary parcel by parcel, and condemnation of adjacent parcels of land can result in varying diminution of value for different properties and their owners. *See Gilmore v. Sandersville R. Co.*, 149 F. Supp. 725, 727 (M.D. Ga. 1955) (finding that the diminution of value to adjacent parcels varied, where various plaintiff landowners challenged a railroad's attempt to condemn their land in order to build a spur track that would run six miles from an existing track to terminate at a kaolin plant).

28. Ellison is the sole owner of a unique portion of the Garrett Siblings Tract. The railroad's impact on the Garrett Siblings Tract will be unique as compared to the Garrett Parent Tract, or the other properties targeted for condemnation by Sandersville Railroad. Furthermore, no other parties have an incentive to adequately protect Ellison's interests. Because no other intervening party or applicant intervening party has incentive to protect Ellison's interests as vigorously as Ellison, Ellison should be permitted to intervene and participate fully in the Proceeding.

29. Ellison also has a claim adverse to Sandersville Railroad involving the subject matter of the pending Proceeding—namely, he wishes to fully protect his interests in the Garrett Siblings Tract and actively assert his rights under Georgia law in the Proceeding. He therefore meets this "minimal" burden for intervention.

This Application is Timely

30. 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." The Scheduling Order provides that applications for intervention in the Proceeding are due 30 days from the first date of publication of notice. Scheduling Order 1(a).

31. As noted above, Sandersville Railroad first published notice of this Proceeding on June 2, 2023, triggering a deadline of July 3, 2023, for applications to intervene.

32. Ellison has filed his application for leave to intervene well before the deadline of July 3, 2023. As such, the Commission or Hearing Officer's grant of this timely Application will not "unduly delay the Proceeding or prejudice the rights of other parties." O.C.G.A. § 46-2-59(e)(2).

Ellison Will Address the Central Issue in the Proceeding

33. The purpose of Ellison's intervention warrants the grant of this Application. Ellison desires to intervene in the Proceeding to protect his interests, including but not limited to protecting his 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 Proceeding; and be heard in oral argument.

34. His 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, Ellison presents questions of law and fact identical to those raised by the Petition and his participation will not introduce any issues unrelated to those already raised by the Petition.

Denying Ellison's Intervention May Violate Due Process

35. Finally, to deny Ellison full participation in the Proceeding may violate his 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.")

36. According to Sandersville Railroad's own assertions, the Garrett Siblings Tract would be included in subsequent condemnation attempts by Sandersville Railroad. Therefore, Ellison has 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 County 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).

37. That is, it is likely that important legal and factual issues that would arise in any proceeding by Sandersville Railroad to acquire Ellison's property will be decided in the

Proceeding. Ellison 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 Ellison from full participation in the Proceeding does not meet that standard.

Ellison Intends to Provide Direct Testimony

38. The Scheduling Order provides that intervening party applications must "state the applicant's present intention to submit direct testimony and by whom and on what subject." Scheduling Order 1(b)(2). Ellison intends to submit direct testimony on the subject of the unique features of the Garrett Siblings Tract, how he uses the Garrett Siblings Tract, and the potential impact to the Garrett Siblings Tract by Sandersville Railroad's condemnation.

REQUEST FOR RELIEF

WHEREFORE, Ellison respectfully requests that the Commission grant his 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. Ellison further respectfully requests that he 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 Ellison and his counsel as follows:

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DATED this 20th day of June, 2023.

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**Pro hac vice* applications pending

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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 Herus Ellison Garrett 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 20 day of June, 2023.

Grant E. McBride

Counsel for Intervenor
Herus Ellison Garrett

Sworn to and subscribed
before me this 20th day
of June, 2023.

KRISTIN YOUNG NOTARY PUBLIC SPALDING COUNTY, GEORGIA My Comm. Expires June 27, 2026

Notary Public
My Commission Expires: 6/27/26


KRISTIN YOUNG
NOTARY
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BIBB COUNTY GEORGIA
My Comm. Expires
June 27, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 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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DATED this 20th day of June, 2023.

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