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 LEO JOHN BRIGGS AND GEORGIA ANN BRIGGS

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"), Leo John Briggs ("Leo") and Georgia Ann Briggs ("Georgia") (together, the "Briggs") respectfully request that the Commission grant their Verified Application to Intervene in the above-captioned proceeding (the "Proceeding"). The Briggs own one parcel of land that is 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. The Briggs have interests of the highest order—the preservation of their 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 Briggs state as follows:

FACTS PERTAINING TO THE BRIGGS' 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 the Briggs (the "Briggs Tract"). Petition 3; Petition Exhibit "B" at 1; Petition Exhibit "C" at 1 ("Parcel 6: Leo J. and Georgia A. Briggs").

5. The Briggs have owned the Briggs Tract for twenty-five years. While the Briggs live in Gwinnett County, Leo visits the property in Sparta at least twice per month. The Briggs own a cabin on the property, and Leo and his son use the land to hunt and as a personal retreat.

6. The Briggs plan to leave the Briggs Tract to their son as an inheritance and wish for the land to remain whole and intact.

7. The Briggs enjoy and make use of the Briggs Tract, and the proposed condemnation will directly and negatively affect their enjoyment and use of the Briggs Tract. The Briggs also intend to use the Briggs Tract in the future in ways that will be directly and negatively affected by the proposed condemnation of the Briggs Tract.

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

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

10. 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.

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

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

13. 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.

14. 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.

15. 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.

16. 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 the first date of publication of notice. Scheduling Order 1(a).

17. 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

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

The Briggs Have Important Legal, Property, or Other Interests

19. 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).

20. Because they own the Briggs Tract, the Briggs 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 Briggs' Interests

21. 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).

22. No other parties can adequately represent the Briggs' 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).

23. The Briggs' status as the owners of the Briggs 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 the Briggs 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).

24. The Briggs are the sole owners of the unique Briggs Tract. The railroad's impact on the Briggs 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 the Briggs' interests. Because no other intervening party or

applicant intervening party has incentive to protect the Briggs' interests as vigorously as the Briggs, the Briggs should be permitted to intervene and participate fully in the Proceeding.

25. The Briggs 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 Briggs Tract and actively assert their rights under Georgia law in the Proceeding. They therefore meet the "minimal" burden for intervention.

This Application is Timely

26. 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).

27. 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.

28. The Briggs have filed their 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).

The Briggs Will Address the Central Issue in the Proceeding

29. The purpose of the Briggs' intervention warrants the grant of this Application. The Briggs 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 Proceeding; and be heard in oral argument.

30. 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 Briggs 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 Briggs' Intervention May Violate Due Process

31. Finally, to deny the Briggs 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.")

32. According to Sandersville Railroad's own assertions, the Briggs Tract would be included in subsequent condemnation attempts by Sandersville Railroad. Therefore, the Briggs 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 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).

33. That is, it is likely that important legal and factual issues that would arise in any proceeding by Sandersville Railroad to acquire the Briggs' property will be decided in the Proceeding. The Briggs 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 Briggs from full participation in the Proceeding does not meet that standard.

The Briggs Intend to Provide Direct Testimony

34. 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). The Briggs intend to submit direct testimony on the subject of the unique features of the Briggs Tract, how the Briggs use the Briggs Tract, and the potential impact to the Briggs Tract by Sandersville Railroad's condemnation.

REQUEST FOR RELIEF

WHEREFORE, the Briggs 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 Briggs 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 Briggs and their counsel as follows:

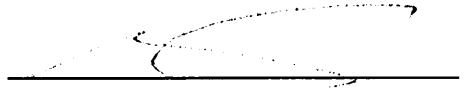
Leo and Georgia Briggs
4500 Hidden Stream Drive
Loganville, GA 30052
lgbriggs@earthlink.net
(770) 979-8446

Grant E. McBride
Smith Welch Webb & White
2200 Keys Ferry Court
McDonogh, GA 30523
gmcbride@smithwelchlaw.com
Tel: (770) 957-3937
Fax: (770) 957-9165

William R. Maurer
Institute for Justice
600 University Street, Ste. 1730
Seattle, WA 98101
wmaurer@ij.org
Tel: (206) 957-1300

Elizabeth L. Sanz
Renée D. Flaherty
Institute for Justice
901 N. Glebe Rd., Ste. 900
Arlington, VA 22203
bsanz@ij.org
rflaherty@ij.org
Tel: (703) 682-9320

DATED this 20th day of June, 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
gmcbride@smithwelchlaw.com
Tel.: 770-957-3937
Fax: 770-957-9165

/s/ William R. Maurer
William R. Maurer*
Washington Bar No. 25451
INSTITUTE FOR JUSTICE
600 University Street, Ste. 1730
Seattle, WA 98101
(206) 957-1300
wmaurer@ij.org

Elizabeth L. Sanz*
California Bar No. 340538
Renée D. Flaherty*
District of Columbia Bar No. 1011453

INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Ste. 900
Arlington, VA 22203
(703) 682-9320
bsanz@ij.org
rflaherty@ij.org

Counsel for Intervenors
Leo John Briggs and Georgia Ann Briggs

**Pro hac vice* applications pending

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

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 Leo John Briggs and Georgia Ann Briggs 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 Intervenors
Leo John Briggs and Georgia Ann Briggs

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

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

Notary Public
My Commission Expires: 6/27/26


KRISTIN YOUNG
NOTARY
PUBLIC
GWINNETT COUNTY, GEORGIA

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):

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

Robert Donald Garrett, Sr.
Sarah V. Garret
1335 Shoals Road
Sparta, GA 31087

William Blaine Smith
Helen Diane Smith
823 Chatsworth Drive
Accokeek, MD 20607

Marvin Smith, Jr.
Patricia Smith
15500 Avery Road
Rockville, Maryland 20855

Joel Bradford Reed
Kathy Lynn Reed
5 Dogwood Lane
Chatsworth, GA 30705

Sally G. Wells
140 Dunn Road
Sparta, GA 31087

Donna N. Garrett
154 Lakeview Drive
Sparta, GA 31087

Verne K. Hollis
373 Hamilton Street
Sparta, GA 31087

Herus Ellison Garrett
111 Brookwood Court
Eatonton, GA 31024

Thomas Ahmed Lee
8201 Brookriver Drive, Ste 246
Dallas, TX 75247

Property Owners

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

Rob Trokey
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334
E-mail: rtrokey@psc.state.ga.us

Director, Electric Unit of the Public Service Commission

DATED this 20th day of June, 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 Intervenors Leo John Briggs and Georgia Ann Briggs