INSTITUTE FOR JUSTICE
WASHINGTON

June 30, 2023

VIA email and electronic filing

Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334
Attn: Nancy Gibson
Designated Hearing Officer

Re: Docket No. 45045; Response to Email of Sandersville Railroad Co.

Dear Hearing Officer Gibson,

As you know, we represent the property owners seeking intervention in this proceeding. On their behalf, we wish to respond to Sandersville Railroad Company's email to you dated June 28, 2023.

Sandersville Railroad's email states that it wishes to expand this proceeding to include the properties of the applicant intervenors that lie in the path of its proposed spur. Sandersville Railroad filed the petition in this proceeding against one property owner—the Garretts—even though its petition recognized that it would require eighteen properties to construct the spur. If the Commission were to grant the petition regarding only the Garretts, this would have created a precedent to apply to the remaining properties and a powerful bargaining chip to use against any remaining property owners who refused to sell—in short, it would have given the railroad a lot of what it needed to acquire all remaining properties without having to litigate against anybody but the Garretts. The fact that some property owners have proactively intervened in this proceeding has closed off this opportunity, however, and the railroad now wishes to force the proceedings against all remaining property owners into the procedural box it created by filing against only one property owner.[1] Rather than warp the Commission's proceedings to fit the railroad's now-abandoned strategy, the property owners respectfully request that you dismiss the proceeding against the Garretts and order the railroad to file petitions against all property owners who refuse to sell. At that point, both you and the Commission may consider whether, and under what conditions, these proceedings should or can be consolidated. This will ensure judicial economy and due process to all parties in the path of the railroad spur.

[1] Sandersville Railroad asserts that it did not file petitions against property owners besides the Garretts because it remained "hopeful" that other property owners would "discuss mutually-agreeable purchases and sales of the rights of way needed for the railroad's spur." In fact, Sandersville Railroad has not made any attempts to negotiate with the other intervening property owners for months.

600 University Street, Suite 1730 Seattle, WA 98101 (206) 957-1300 (206) 957-1301 Fax
general@ij.org www.ij.org/washington

The property owners wish to clearly state, moreover, that they strongly object to any consolidation of multiple proceedings in the schedule set for considering only the Garretts' property. The railroad alleges that it "highly doubt[s] that [the property owner intervenors] will have any valid objection to consolidating the commission's consideration of Mr. Garrett's and all intervenors' parcels into one docket where the sole issue for consideration will remain whether the railroad's industrial spur serves any public purpose." We respectfully disagree with the assumptions that underlie the railroad's statement, and the property owners will object to any proposal to consolidate all proceedings into one hearing that proceeds on the schedule set for a hearing concerning only one property. Put simply, a hearing schedule appropriate for the consideration of the condemnation of *one* property is simply not appropriate to consider the condemnation of the *eight* properties belonging to our clients.

The property owners hold this position because the railroad's statement that the sole issue in this proceeding is "whether the railroad's industrial spur serves any public purpose" is an incorrect statement of Georgia law and this Commission's precedent. To be sure, whether the railroad's condemnation would serve a public use is an important consideration. However, Georgia statutes require the consideration of other factors besides just public use. For instance, when the Commission considered the Hartwell Railroad's proposal to condemn property owned by the Hartwell First United Methodist Church, the Commission examined whether the condemnation served a legitimate public purpose but also the following statutory considerations:

> In considering powers of Hartwell Railroad under O.C.G.A. § 46-8-120, only § 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 *(emphasis added).* Again, O.C.G.A. § 46-8-121 states "acquisition of property by companies; approval by commission as prerequisite to exercise of power of eminent domain: Authority and power are granted to railroad companies to acquire by purchase or gift and to hold such real estate as may be **necessary** for all of the purposes mentioned in Code Section 46-8-120." (Emphasis added).

Moreover, in that proceeding, the Commission also considered the historical importance of the property at issue and the availability of reasonable alternatives to condemnation. Specifically, the Commission stated: "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. The Commission also finds and concludes that with the existence of several reasonable alternatives, the condemnation is not 'necessary for the proper accommodation of the business of the company.' O.C.G.A. §46-8-120(4)."). Thus, the Commission's precedent and Georgia statutes mandate that the Commission consider not just the public purpose and public interest, but also several other considerations, including, but not limited to, whether each proposed condemnation is necessary for the proper accommodation of the business of the company and accomplishment of the powers of the railroad listed in O.C.G.A. § 46-8-120.

With these considerations in mind, the property owners do not believe that it is either fair nor consistent with the Commission's statutory obligations to force the consideration of the necessity, historic importance, and the availability of reasonable alternatives of the condemnation of at least eight properties into a hearing schedule designed to consider these issues for one property.

Finally, the property owners note that while they are represented by a single group of lawyers and have similar interests, they do not represent the entire universe of owners of the eighteen properties in the path of the spur. They do not know whether, or to what extent, these other properties wish to be heard or what their position on the condemnation is. It would be an error to simply assume that these property owners share the same positions and goals as the property owners that have intervened.

The applicant intervenor property owners are, of course, open to reasonable proposals to ensure that any hearing or hearings before you or the Commission are efficient, non-duplicative, and consistent with the Commission's statutory obligations. They also believe that the need for any formal, opposed motions could be obviated by the parties discussing the issue and arriving at a mutually agreed approach that saves them, the Hearing Officer, and the Commission time and resources. Nonetheless, if the railroad proceeds as it has suggested, the property owners will oppose these efforts for the reasons set forth above, as well as any additional reasons necessitated by the railroad's pleadings.

The property owners respectfully request that the railroad's initial email and this letter be made part of the record in Docket No. 45045.

Thank you for your consideration and please do not hesitate to contact me or my colleagues if you wish to discuss this further.

Sincerely,

INSTITUTE FOR JUSTICE

/s/ William R. Maurer
By: William R. Maurer

Attorneys for Intervenor Applicant Property Owners

cc: Service list in Docket No. 45045

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2023, a copy of the foregoing *Letter* 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. Garrett
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

Leo John Briggs
Georgia Ann Briggs
4500 Hidden Stream Drive
Loganville, GA 30052

Sally G. Wells
140 Dunn Road
Sparta, GA 31087

Donna N. Garrett
154 Lakeview Drive
Sparta, GA 31087

Verne G. 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

Jamie Rush
Malissa Williams
Miriam Gutman
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Avenue, Suite 340
Decatur, Georgia 30030
Telephone: (404) 673-6523
jamie.rush@splcenter.org
malissa.williams@splcenter.org
miriam.gutman@splcenter.org

Counsel for Intervenors No Railroad in Our Community Coalition ("NROCC")

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 5th day of July, 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