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

PROPERTY OWNER INTERVENOR APPLICANTS' RESPONSE TO SANDERSVILLE RAILROAD COMPANY'S AMENDED PETITION FOR APPROVAL TO ACQUIRE REAL ESTATE BY CONDEMNATION

INTRODUCTION

This proceeding is a private railroad's attempt to take private property via eminent domain to build what it refers to as a spur for the benefit of a private quarry. The railroad alleges that portions of 18 properties are necessary for the spur, but at first, the railroad asked the Commission for permission to take a portion of only one property. The owners of that property applied to intervene in this proceeding and then some, but not all, of the other property owners whose land the railroad had specifically identified in the railroad's initial petition also applied to intervene in this proceeding. The railroad then petitioned the Commission to take their properties, too.

On July 20, 2023, Sandersville Railroad Company ("Sandersville Railroad" or "Petitioner") filed with the Georgia Public Service Commission (the "Commission") an Amended Petition for Approval to Acquire Real Estate by Condemnation (the "Amended Petition," Doc. # 205194). The Amended Petition seeks approval from the Commission to take portions of eight additional parcels in proceedings pursuant to O.C.G.A. §§ 46-8-120 and 46-8-121 (the "Proceeding," PSC Docket No. 45045). The Amended Petition modifies the Petition for Approval to Acquire Real Estate by Condemnation filed by Sandersville on March 8, 2023 (the "First

Petition," Doc. # 193527). The First Petition sought approval from the Commission to take only property owned by Robert Donald Garrett, Sr., and Sarah Veazey Garrett (together, the "Garretts").

The First Petition alleged that Sandersville Railroad proposes to build what it alleges is a spur (the "Hanson Spur" or the "Project") and that this project requires a portion of the Garretts' property to complete. First Petition ¶¶ 2, 11–12. The Garretts applied to intervene in the Proceeding (Doc. # 193944). The Garretts then answered the First Petition on May 2, 2023 (Doc. # 194316). The First Petition alleged that 17 other properties are also necessary to complete the Hanson Spur. First Petition ¶ 8. Owners of eight of those parcels then filed applications for leave to intervene in the Proceeding (Docs. # 194317–18, 204858–64).[1] This document will refer to the Garretts and the eight intervening property owners (in other words, all property owners who have applied to intervene in the Proceeding) collectively as "the Property Owners."[2] The Amended Petition seeks approval to take portions of the Property Owners' land to build the Hanson Spur.

The Property Owners respectfully request that the Commission deny the Amended Petition. On its face, the Amended Petition does not meet the standards for approval of a railroad's exercise of eminent domain. The most obvious problem is that the Amended Petition asks the Commission for approval to acquire land by condemnation to build a line that, according to the Amended Petition, is not contiguous and that does not connect to a larger rail line or a loading facility. Instead, the railroad has sought to condemn first only one property and then only the properties of those owners who have sought to intervene in the proceeding. Its Amended Petition does not allege

[1] Those property owners are William Blaine Smith and Helen Diane Smith; Marvin Smith, Jr., and Patricia Smith; Leo John Briggs and Georgia Ann Briggs; Joel Bradford Reed and Kathy Lynn Reed; Donna N. Garrett; Herus Ellison Garrett; Sally G. Wells; Verne Kennedy Hollis; and Thomas Ahmad Lee.

[2] Owners of nearby parcels that are not part of the Hanson Spur's proposed route have also applied to intervene in the Proceeding. *See* Verified Application for Leave to Intervene of the No Railroad in Our Community Coalition (Doc. # 204880).

that it has, or will, acquire all properties necessary to provide its purported service to customers. Put another way, even if the Commission were to give Sandersville everything it requests in the Amended Petition, without acquiring all the properties in the path of the Hanson Spur, it cannot provide any service to any customer. Its Amended Petition thus simply evinces a desire to retaliate against the Property Owners and not the acquisition of all properties necessary to construct the Hanson Spur.

Even if it were to expand its petition again to include those property owners it does not wish to punish for exercising their rights under Georgia law and the Georgia and United States Constitutions, the Amended Petition still fails on its face. The Amended Petition does not propose or describe a public use, nor is the Hanson Spur a project that meets the standards for the exercise of eminent domain by railroads under Georgia law. The Property Owners therefore respectfully request that the Commission deny the Amended Petition as legally and factually insufficient.

RESPONSE TO AMENDED PETITION

1. The Property Owners lack sufficient knowledge to respond to Paragraph 1 of the Amended Petition and therefore deny the allegations in Paragraph 1.

2. The Property Owners admit the allegation in Paragraph 2 of the Amended Petition that Petitioner proposes to build a track to which Petitioner refers as the "Hanson Spur," while denying that the Hanson Spur qualifies as a "spur" as that term is typically understood. The Property Owners lack sufficient knowledge to respond to the remaining allegations in Paragraph 2 and deny those allegations.

3. The Property Owners lack sufficient knowledge to respond to Paragraph 3 of the Amended Petition and deny the allegations in Paragraph 3.

4. Petitioner's allegation in Paragraph 4 of the Amended Petition that the Hanson Spur will serve a public purpose is a legal conclusion and is denied. The Property Owners lack sufficient knowledge to respond to the remaining allegations in Paragraph 4 and deny those allegations.

5. Petitioner's allegation in Paragraph 5 of the Amended Petition that the Hanson Spur will serve a public purpose is a legal conclusion and is denied. The Property Owners lack sufficient knowledge to respond to the remaining allegations in Paragraph 5 and deny those allegations.

6. The Property Owners admit the allegation in Paragraph 6 of the Amended Petition that Petitioner submitted a memorandum as Exhibit "A" of the Amended Petition. However, the allegation that the memorandum outlines a business necessity for the Hanson Spur Project is a legal conclusion and is denied.

7. The Property Owners admit the allegations in Paragraph 7.

8. The Property Owners lack sufficient knowledge to respond to Paragraph 8 of the Amended Petition and deny the allegations in Paragraph 8. The Property Owners also lack sufficient knowledge to respond to the allegations contained in footnote 1 of this paragraph and deny the allegations in such footnote.

9. The Property Owners lack sufficient knowledge to respond to Paragraph 9 of the Amended Petition and deny the allegations in Paragraph 9.

10. In response to Paragraph 10, the Property Owners admit that a list of parcels and addresses is attached to the Amended Petition as Exhibit "C" and that it is a list of mailing addresses for the owners of, and other holders of interest in, various parcels that Petitioner alleges it must acquire to complete the Hanson Spur as it is currently designed. As to the other allegations in Paragraph 10, the Property Owners lack sufficient knowledge to respond, and deny those allegations.

11. The Property Owners admit that the Garretts own Hancock County Tax Parcel Number 186 013, numbered as Parcel Number 13 in Exhibit "B", and that Mr. Garrett's mailing address is set out in Exhibit "C". The Property Owners deny the remaining allegations in Paragraph 11 of the Amended Petition.

12. The Property Owners lack sufficient knowledge to respond to Paragraph 12 of the Amended Petition and deny the allegations in Paragraph 12.

13. The Property Owners lack sufficient knowledge to respond to Paragraph 13 of the Amended Petition and deny the allegations in Paragraph 13.

14. The Property Owners deny the allegations in Paragraph 14 of the Amended Petition.

15. In response to Paragraph 15, the Property Owners admit that Petitioner delivered the 10-Day Letter to the Garretts. The Property Owners lack sufficient knowledge as to the consistency of Petitioner's actions relating to Georgia Department of Transportation's practice in acquiring property for right of way, and they deny such allegations. Additionally, the 10-Day Letter contains legal conclusions, and the Property Owners deny all allegations suggested by the content of the 10-Day Letter.

16. In response to Paragraph 16, the Property Owners admit that Petitioner delivered the Regrets Letter to the Garretts. The Property Owners lack sufficient knowledge as to the consistency of Petitioner's actions relating to Georgia Department of Transportation's practice in acquiring property for right of way, and they deny such allegations. Additionally, the Regrets Letter contains legal conclusions, and the Property Owners deny all allegations suggested by the content of the Regrets Letter.

17. The Property Owners deny the allegations in Paragraph 17 of the Amended Petition.

18. The Property Owners admit that the Briggs own Hancock County Tax Parcel Number 166 035, numbered Parcel Number 6 in Exhibit "B", and that the Briggs' mailing address is set out in Exhibit "C". The Property Owners deny the remaining allegations in Paragraph 18 of the Amended Petition. The Property Owners lack sufficient knowledge to respond to footnote 2 of the Amended Petition and deny the allegations in footnote 2. The Property Owners admit the allegation in footnote 3 of the Amended Petition that "Sandersville Railroad initially filed this Petition naming only Mr. Garrett as a respondent" and that subsequently the named Property Owners applied to intervene in the Proceeding. The Property Owners lack sufficient knowledge to respond to allegations about Petitioner's motivations and deny them. The remaining allegations in footnote 3 of the Amended Petition are legal conclusions and the Property Owners deny them.

19. The Property Owners lack sufficient knowledge to respond to Paragraph 19 of the Amended Petition and therefore deny the allegations in Paragraph 19.

20. The Property Owners lack sufficient knowledge to respond to Paragraph 20 of the Amended Petition and deny the allegations in Paragraph 20.

21. The Property Owners deny the allegations in Paragraph 21 of the Amended Petition.

22. The Property Owners admit the allegations in Paragraph 22 of the Amended Petition that the Briggs applied to intervene in the Proceeding. The application speaks for itself, and any allegations based on quotations from the application constitute legal conclusions that the Property Owners deny.

23. The Property Owners deny the allegations in Paragraph 23 of the Amended Petition.

24. The Property Owners admit that the Smiths own Hancock County Tax Parcel Number 186 003, numbered as Parcel Number 7 in Exhibit "B", and that Mr. Smith Jr.'s mailing

address is set out in Exhibit "C".[3] The Property Owners deny the remaining allegations in Paragraph 24 of the Amended Petition. The Property Owners lack sufficient knowledge to respond to footnote 5 of the Amended Petition and deny the allegations in footnote 5.

25. The Property Owners lack sufficient knowledge to respond to Paragraph 25 of the Amended Petition and deny the allegations in Paragraph 25.

26. The Property Owners lack sufficient knowledge to respond to Paragraph 26 of the Amended Petition and deny the allegations in Paragraph 26.

27. The Property Owners deny the allegation in Paragraph 27 of the Amended Petition.

28. The Property Owners admit the allegations in Paragraph 28 of the Amended Petition that the Smiths applied to intervene in the Proceeding. The application speaks for itself, and any allegations based on quotations from the application constitute legal conclusions that the Property Owners deny. The Property Owners admit the allegation in footnote 6 of the Amended Petition only insofar as Patricia Smith's name is not on the deed to the Smith, Jr. Parent Tract.

29. The Property Owners deny the allegations in Paragraph 29 of the Amended Petition.

30. The Property Owners admit that the Smiths own Hancock County Tax Parcel Numbers 186 004, 186 009, and 186 010, numbered as Parcel Numbers 8, 10, and 11 in Exhibit "B", and that the Smiths' mailing address is set out in Exhibit "C". The Property Owners deny the remaining allegations in Paragraph 30 of the Amended Petition. The Property Owners lack sufficient knowledge to respond to footnote 9 of the Amended Petition and deny the allegations in footnote 9.

[3] There appears to be a typographical error in Paragraph 24 of the Amended Petition. The second sentence states "The Briggs Parent Tract" instead of "The Smith, Jr. Parent Tract." To the extent that this paragraph meant to allege that the Briggs Parent Tract is the property labeled Parcel Number 7 in Exhibit "B" of the Amended Petition, the Property Owners deny this allegation.

31. The Property Owners lack sufficient knowledge to respond to Paragraph 31 of the Amended Petition and deny the allegations in Paragraph 31.

32. The Property Owners lack sufficient knowledge to respond to Paragraph 32 of the Amended Petition and deny the allegations in Paragraph 32.

33. The Property Owners lack sufficient knowledge to respond to Paragraph 33 of the Amended Petition and deny the allegations in Paragraph 33.

34. The Property Owners lack sufficient knowledge to respond to Paragraph 34 of the Amended Petition and deny the allegations in Paragraph 34.

35. The Property Owners deny the allegation in Paragraph 35 of the Amended Petition.

36. The Property Owners admit the allegations in Paragraph 36 of the Amended Petition that the Smiths applied to intervene in the Proceeding. The application speaks for itself, and any allegations based on quotations from the application are legal conclusions that the Property Owners deny.

37. The Property Owners deny the allegations in Paragraph 37 of the Amended Petition.

38. The Property Owners admit that the Reeds own Hancock County Tax Parcel Number 186 011, numbered as Parcel Number 12 in Exhibit "B", and that Mr. Reed's mailing address is set out in Exhibit "C". The Property Owners deny the remaining allegations in Paragraph 38 of the Amended Petition. The Property Owners lack sufficient knowledge to respond to footnote 12 of the Amended Petition and deny the allegations in footnote 12.

39. The Property Owners lack sufficient knowledge to respond to Paragraph 39 of the Amended Petition and deny the allegations in Paragraph 39.

40. The Property Owners lack sufficient knowledge to respond to Paragraph 40 of the Amended Petition and deny the allegations in Paragraph 40.

41. The Property Owners deny the allegations in Paragraph 41 of the Amended Petition.

42. The Property Owners admit the allegations in Paragraph 42 of the Amended Petition that the Reeds applied to intervene in the Proceeding. The application speaks for itself, and any allegations based on quotations from the application are legal conclusions that the Property Owners deny. The Property Owners admit the allegation in footnote 13 of the Amended Petition only insofar as Kathy Lynn Reed's name is not on the deed to the Reed Parent Tract.

43. The Property Owners deny the allegations in Paragraph 43 of the Amended Petition.

44. The Property Owners admit that Verne Kennedy Hollis, Donna N. Garrett, Herus Ellison Garrett, and Sally G. Wells (the "Parcel 14 Owners") own Hancock County Tax Parcel Number 186 014, numbered as Parcel Number 14 in Exhibit "B", and that their mailing addresses are set out in Exhibit "C". The Property Owners deny the remaining allegations in Paragraph 44 of the Amended Petition.

45. The Property Owners lack sufficient knowledge to respond to Paragraph 45 of the Amended Petition and therefore deny the allegations in Paragraph 45.

46. The Property Owners lack sufficient knowledge to respond to Paragraph 46 of the Amended Petition and therefore deny the allegations in Paragraph 46.

47. The Property Owners deny the allegations in Paragraph 47 of the Amended Petition.

48. The Property Owners admit the allegations in Paragraph 48 of the Amended Petition that the Parcel 14 Owners applied to intervene in the Proceeding. The application speaks for itself, and any allegations based on quotations from the application constitute legal conclusions that the Property Owners deny.

49. The Property Owners deny the allegations in Paragraph 49 of the Amended Petition.

50. The Property Owners admit that Mr. Lee owns Hancock County Tax Parcel Number 186 005, numbered Parcel Number 18 in Exhibit "B", and that Mr. Lee's mailing address is set out in Exhibit "C". The Property Owners deny the remaining allegations in Paragraph 50 of the Amended Petition.

51. The Property Owners lack sufficient knowledge to respond to Paragraph 51 of the Amended Petition and therefore deny the allegations in Paragraph 51.

52. The Property Owners lack sufficient knowledge to respond to Paragraph 52 of the Amended Petition and therefore deny the allegations in Paragraph 52.

53. The Property Owners deny the allegation in Paragraph 53 of the Amended Petition.

54. The Property Owners admit the allegations in Paragraph 54 of the Amended Petition that Mr. Lee applied to intervene in the Proceeding. The application speaks for itself, and any allegations based on quotations from the application constitute legal conclusions that the Property Owners deny.

55. The Property Owners deny the allegations in Paragraph 55 of the Amended Petition.

56. The Property Owners lack sufficient knowledge to respond to Paragraph 56 of the Amended Petition and deny the allegations in Paragraph 56.

57. The allegations in Paragraph 57 are legal conclusions and the Property Owners deny the allegations in Paragraph 57.

AFFIRMATIVE DEFENSES

1. The Property Owners reserve the right to assert any affirmative defense to the extent that facts discovered in the course of this Proceeding support such an affirmative defense.

2. The Property Owners reserve the right to assert any affirmative defense raised by any other intervening party.

3. The Hanson Spur Project is not a public use, nor undertaken for a public purpose, under Georgia law, Ga. Const. art. I, § III, para. 1, and U.S. Const. amends. V and XIV.

4. Condemnation of the Property Owners' land violates Ga. Const. art. I, § I, paras. II and XXVIII.

5. Condemnation of the Property Owners' land is not a business necessity.

6. Condemnation of the Property Owners' land is not necessary.

7. Sandersville Railroad is estopped from acquiring any property owned by the Property Owners due to the doctrine of unclean hands.

8. The Commission's procedures violate the Property Owners' right to due process of law and equal protection under the Georgia and U.S. Constitutions.

9. The Amended Petition is insufficient because it does not seek the acquisition of all properties necessary to construct the Hanson Spur.

REQUEST FOR RELIEF

WHEREFORE, the Property Owners respectfully request that this Commission, either through the Hearing Officer or its own authority, enter an order in favor of the Property Owners:

1. DENYING the Amended Petition;

2. Entering an order stating that Sandersville Railroad may not condemn the Property Owners' property;

3. Awarding the Property Owners any and all such other relief as the Commission deems just and equitable, including, but not limited to, an award of attorneys' fees and costs to the extent provided by Georgia law.

DATED this 10th day of August, 2023.



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**Pro hac vice* applications pending

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2023, a copy of the foregoing *Property Owner Intervenor Applicants' Response to Sandersville Railroad Company's Amended Petition for Approval to Acquire Real Estate by Condemnation* 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 10th day of August, 2023.



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