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August 28, 2023

Via Alternative Electronic Filing

Ms. Sallie Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington Street S.W.
Atlanta, GA 30334-5701

RE: Sandersville Railroad Company; Hancock County, Georgia Acquisition
Docket No. 45045

Dear Ms. Tanner:

For filing in the above-styled docket, please find the enclosed *Joint Status Report Pursuant to the Hearing Officer's August 14, 2023 Order*. As required by the electronic filing procedures, a physical copy of this filing will be mailed to the Commission. Thank you for your attention to this matter.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

L. Craig Dowdy
For TAYLOR ENGLISH DUMA LLP

LCD:wf
Enclosure

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BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

In re: Sandersville Railroad Company's Petition for Approval to Acquire Real Estate by Condemnation	**Docket No.: 45045**

AMENDED JOINT STATUS REPORT PURSUANT TO THE HEARING OFFICER'S AUGUST 14, 2023 ORDER

Pursuant to the Hearing Officer's Order Directing Parties to Meet and Confer in Good Faith Regarding Subpoena Request dated August 14, 2023 (the "Meet and Confer Order"), ordering counsel for Sandersville Railroad Company ("Sandersville Railroad") and the Property Owner Intervenors (the "Respondents" and collectively with Sandersville Railroad the "Parties")[1] to submit a joint status report, Sandersville Railroad and the Respondents have conferred and jointly submit the following report:

I. Objections and Responses of Sandersville Railroad to which Respondents Do Not Take Issue

Respondents do not take issue with Sandersville Railroad's objections and responses set out in its Objections and Response to the Hearing Officer's Subpoena to Testify and Duces Tecum (the "Objections and Responses") with respect to Duces Tecum Nos. 1, 3, 5, 7, 9, 10, 11, 12, 15, 16, 19, 20, 21, 22, 23, and 24, and the first sentence only of Duces Tecum No. 13. Accordingly, there is no dispute between Sandersville Railroad and the Respondents with respect to the above numbered Duces

[1] The Respondents' consist of Robert Donald Garrett, Sr., and Sarah Veazey Garrett; 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.

Tecum and the first sentence of Duces Tecum No. 13.

II. Resolution of Release of Documents Containing Trade Secrets

The Parties have agreed in principle on a method to protect Sandersville's trade secrets. At the moment, the Parties have exchanged drafts of a Confidentiality Agreement and expect to finalize and execute the agreement prior to the due date for responsive documents of August 28, 2023, by 4:00 p.m. Meet and Confer Order 1. Execution of this agreement and the delivery of documents and materials covered by the agreement will resolve production of documents sought pursuant to Duces Tecum Nos. 2, 4, 5, 6, 8, 18, and the second sentence of Duces Tecum Request No. 13, subject to Section III below.

III. Remaining Unresolved Issues

The Parties engaged in good faith negotiations on Wednesday, August 16, 2023, and resolved several issues. However, they were unable to agree to a resolution on the production of documents in response to Duces Tecum Requests Nos. 14 and 17 as well as the second sentence of Duces Tecum Request No. 13. Pursuant to the Meet and Confer Order, the Parties have listed these areas of disagreement, their respective positions regarding each dispute, and their recommended resolution of the dispute.

Second Sentence of Duces Tecum No. 13: "Please provide documents related to the Project Parcels which Sandersville Railroad has in fact acquired or has written or verbal agreements to acquire."

Sandersville's Position: In the Objections and Responses, Sandersville Railroad set out general objections in paragraphs 6 – 19 and specific objections to Duces Tecum No. 13, all of which are incorporated herein by reference.

Documents related to Project Parcels Sandersville Railroad has acquired or for which Sandersville Railroad has a written or verbal agreement to acquire are not relevant to this proceeding, which involves the condemnation of properties that Sandersville Railroad has not acquired and has no contract to acquire. Such documents are not related to whether the Hanson Spur will serve a public purpose, and Respondents point to no authority that supports their contention that "documents related to" the acquisition of properties not at issue in this proceeding are relevant to the public use of the Hanson Spur.

The issue at hand is "whether the condemnation serves a public purpose . . . ." (*Central of Georgia Railroad Company v. Georgia Public Service Commission*, 257 Ga. 217, 219, 356 S.E.2d 865, 866 (1987)). This inquiry focuses on how the spur will be used, and any inquiry regarding the acquisition schedule or construction progress for the Hanson Spur has no bearing on whether the Hanson Spur serves a public purpose.

Respondents' have asserted that the documents sought are "relevant" to the Hanson Spur, but Respondents have failed to show how the documents "logically tend[] to prove or disprove a material fact which is at issue in [this] case." *Kudzu Capital, LLC v. City of Decatur*, 368 Ga. App. 32, 34, 889 S.E.2d 173 (2023).[2] The Respondents' argument assumes that a condemnor must seek to acquire all property necessary for a public use at one time. That is antithetical and incongruent with established

[2] In contrast to *Kudzu Capital*, which involved a dispute regarding "just compensation" where the Georgia Court of Appeals held that evidence of the "price [the condemnee] paid for the property and the corresponding tax certificate were relevant," the information sought by the Respondents in no way relates to the issue in this proceeding: whether the Hanson Spur will serve a public use. *Kudzu Capital, LLC*, 368 Ga. App. at 34.

condemnation practice of other condemnors and Georgia law. State and federal department of transportation projects are often acquired one parcel at a time.

Other Georgia condemnation proceedings also allow piecemeal acquisitions. For example, in an *in rem* condemnation proceeding (which Sandersville Railroad will have to file in Hancock County Superior Court with respect to each of the Project Parcels that it cannot acquire by negotiation or gift if and after the Commission finds the Hanson Spur to be a public benefit) the condemnor may only include multiple parcels in one action if there is a common denominator—in other words, a common thread in ownership. *E.g.*, *Dept. of Transp. V. Olshan*, 237 Ga. 213, 227 S.E.2d 349 (1976). The Department of Transportation does not have to seek the Commission's approval to condemn land, it may authorize itself to condemn land. If the Department of Transportation condemned one parcel before it had acquired all parcels necessary for a roadway project (as it routinely does in practice), then under Respondents preposterous theory, the roadway project would not serve a public purpose. That is an absurd conclusion and contrary to condemnation practice and Georgia law. Respondents seek to conjure a new arm of condemnation law that fits their attempts for drag net discovery of all documents tangentially related to the Hanson Spur, as opposed to documents relevant to the issue at hand: whether the Hanson Spur, once constructed, will serve a public purpose.

To the extent that agreements to acquire real estate are verbal, there is nothing to produce. Additionally, any written documents regarding completed acquisitions are publicly available and easily obtained by Respondents.

Accordingly, the second sentence of Duces Tecum No. 13 does not seek relevant documents and is merely designed to embarrass and harass property owners with whom Sandersville Railroad has been able to engage in successful and productive negotiations.

Sandersville's Proposed Resolution: The Hearing Officer should sustain Sandersville Railroad's objection regarding the second sentence of Duces Tecum No. 13.

Respondents' Position: In Sandersville's Amended Petition for Approval to Acquire Real Estate," dated July 20, 2023, (the "Amended Petition"), Sandersville alleged that it "has acquired or has written or verbal agreement to acquire several Project Parcels." Amended Petition 4. Georgia law authorizes the Georgia Public Service Commission "to issue an order permitting its employees and agents to take depositions and otherwise obtain discovery of any matter, not privileged, which is relevant to the subject matter involved in the investigation, proceeding, or petition before the commission, in the same manner as prescribed in Chapter 11 of Title 9 for discovery in civil actions," O.C.G.A. § 46-2-57(a), and the Commission issued an order appointing the Hearing Officer to conduct such a proceeding on March 24, 2023. O.C.G.A. § 9-11-26(b)(1) provides that discovery may be had "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . . "

"Relevant to the subject matter involved in the pending action" has been construed "broadly" by the Supreme Court of Georgia "to encompass any matter that

bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Bowden v. The Med. Ctr., Inc.*, 297 Ga. 285, 291 (2015) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (internal quotations omitted). "Thus, in the discovery context, courts should and ordinarily do[] interpret 'relevant' very broadly to mean matter that is relevant to anything that is or may become an issue in the litigation." *Id*.

The railroad should produce the requested documents because they are relevant to the subject matter of, and issues raised in, this proceeding. This is because, most obviously, Sandersville has placed their existence at issue in this proceeding by explicitly referencing them in their Amended Petition. Amended Petition 4, ¶ 9. A broad interpretation of the word "relevant" easily encompasses facts that the petitioner itself deemed relevant enough to raise in its own petition.

Moreover, these documents are relevant to Respondents' claims and defenses. Whether Sandersville can, or will, obtain sufficient properties to build an operational, contiguous track capable of connecting to the Hanson Quarry and the CSX line goes directly to whether this track will be able to function at all. Moreover, the documents also go directly to *when* the track may be able to come online—if Sandersville does not have agreements from all property owners, and those owners refuse to sell, will Sandersville need to resort to petitioning this Commission for additional authority to seize property? These are questions that directly inform whether this project is for public use and designed to accomplish a public purpose, as well as if Sandersville's attempt to acquire Respondents' property is necessary.

Respondents' Proposed Resolution: Sandersville should produce the documents. Sandersville has suggested that widespread dissemination of these documents may result in harassment of property owners who have agreed to sell portions of their property to the railroad. To the extent that Sandersville is concerned about the privacy of those voluntary sellers, however, the solution is not to withhold that information. Rather, this concern can be addressed by having any production be limited to "Attorneys' eyes only" and enforced through an appropriate order.

Duces Tecum No. 14: "Please identify and describe any analysis Sandersville Railroad has conducted regarding the historical importance of each of the Project Parcels. Please provide any documents related to or relied upon to provide your answer."

Sandersville's Position: In the Objections and Responses, Sandersville Railroad set out general objections in paragraphs 6 – 19 and specific objections to Duces Tecum No. 14, all of which are incorporated herein by reference. Despite the Respondents' reliance upon the Commission's order in *In re: Petition of the Great Walton Railroad Company, Inc. d/b/a The Hartwell Railroad Company for Approval to Acquire Real Estate by Condemnation*, the fact that the property at issue was "listed as a historic property on the National Trust of Historic Places," was not determinative of the Commission's decision denying the petition for condemnation. Docket No. 41607, Document 173807, p. 4 (Aug. 24, 2018). In fact, the Commission's decision stemmed from its determination that the proposed runaround would only serve one customer and several reasonable alternative routes existed. *Id.* at 3–4. *Great Walton Railroad Company, Inc.* is easily distinguishable on the facts because it involved a petition to take land that was previously accessible to the public as an active church campus to

build a runaround track that would serve only one customer. In contrast, Sandersville Railroad is seeking to take land inaccessible to the public to create a spur that would benefit the public.

Sandersville's Proposed Resolution: The Hearing Officer should sustain Sandersville Railroad's objection regarding Duces Tecum No. 14.

Respondents' Position: Sandersville should provide a substantive response and provide any responsive documents. In the Commission's decision in the *Great Walton* proceeding, the Commission stated:

> The Commission notes that the Church property is located in the center of Hartwell and according to the City of Hartwell Historic Preservation Commission ("HPC") for at least three (3) decades the Church has been listed as a historic property on the National Trust of Historic Places having been deeded with a purpose of building a church in 1859. (Exhibit C-8), a letter dated January 9, 2018, tiled with the Commission, states, in part "… the city's HPC considers the requested condemnation of sites for a purpose that has not been approved for historic properties to be a severely negative impact on our efforts to preserve and maintain the integrity of all historic properties in our community for present citizens and future generations." (*id*).

Petition of the Great Walton R.R. Co., Inc. d/b/a the Hartwell R.R. Co. for Approval to Acquire Real Est. by Condemnation., No. 41607, 2018 WL 4154017, at *3 (Aug. 24, 2018). For this reason and others, the Commission then concluded that proposed condemnation in that proceeding "serves no legitimate public purpose and is not necessary." *Id.* Reviewing courts upheld the Commission's conclusion.

This discussion demonstrates that the historical significance of land sought to be condemned by a railroad is a significant factor in determining whether the condemnation serves a public purpose and is necessary. As such, this information is

directly relevant to the subject matter of this proceeding, as well as the claims and defenses of Respondents. It is also likely to be relevant to the claims of the other intervenor in this proceeding. *See* Respondents' Position Regarding Duces Tecum Request No. 13 above.

Respondents' Proposed Resolution: Sandersville should respond to the request and produce any documents responsive to it.

Duces Tecum No. 17: "Please provide any documents related to or relied upon to recount any communications with residents of Hancock County to come onto their land to survey for the construction of Hanson Spur."

Sandersville's Position: In the Objections and Responses, Sandersville Railroad set out general objections in paragraphs 6 – 19 and specific objections to Duces Tecum No. 17, all of which are incorporated herein by reference.

Neither the Duces Tecum nor the Respondents' Position articulates any legal authority as to how communications regarding Sandersville Railroad's exercise of its statutory right to survey property is relevant to whether the Hanson Spur will serve a public purpose. Respondents allege that the requested information is necessary to "test whether the railroad complied with all statutory requirements in conducting such surveys." However, the Respondents fail to recognize that there are no statutory requirements regarding how to conduct such surveying. In fact, O.C.G.A. § 46-8-100(1) is quite clear that "a railroad company . . . shall be empowered . . . to cause such examinations and surveys to be made for the proposed railroad as shall be necessary for the selection of the most advantageous route, and, by its officers, agents, servants, or employees, to enter upon the land or water of any person for that purpose, provided

that the company shall be responsible for all damage done to such property." Respondents do not allege that Sandersville did not take "responsibil[ity] for a[ny] damage done to such property."

Additionally, even if these documents were relevant to the purview of the Commission in this matter, Sandersville Railroad's communications with property owners other than the Respondents are not relevant to the subject matter at hand: whether the Hanson Spur serves a public purpose. In other words, the Respondents cannot show how communications regarding surveying of the Hanson Spur are relevant to whether the Hanson Spur satisfies Georgia statutory requirements for a railroad condemnation.

Sandersville's Proposed Resolution: The Hearing Officer should sustain Sandersville Railroad's objection regarding Duces Tecum No. 17.

Respondents' Position: The requested documents go to a significant issue in this case: how Sandersville will treat the property owners who own property on which the Hanson Spur sits should it succeed in building the track across their property. Whether, or to what extent, the railroad has acknowledged and considered the property rights and privacy concerns of property owners prior to the construction of the track directly speaks to what the residents of Sparta may expect after the line is constructed. Moreover, to the extent that Sandersville does have a statutory right to survey the properties, Respondents are entitled to test whether the railroad complied with all statutory requirements in conducting such surveys. As such, this information is directly relevant to their claims and defenses in this proceeding.

Respondents' Proposed Solution: Sandersville should produce the documents.

RESPECTFULLY SUBMITTED this 28th day of August 2023.

/s/ William R. Maurer
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2023, a copy of the foregoing *Amended Joint Status Report* pursuant to the Commission's order dated August 14, 2023, 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 28th day of August 2023.

/s/ Laura E. Flint
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