

**BEFORE THE  
GEORGIA PUBLIC SERVICE COMMISSION**

**In Re: Sandersville Railroad  
Company's Petition For Approval to  
Acquire Real Estate by  
Condemnation**

**Docket No.: 45045**

**REBUTTAL TESTIMONY OF  
BENJAMIN J. TARBUTTON, III**

September 28, 2023

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1           **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2           A. My name is Benjamin (“Ben”) J. Tarbutton, III, I am President of the  
3 Sandersville Railroad Company (the “Railroad” or “Sandersville Railroad”). My  
4 business address is 206 North Smith Street, P.O. Box 269, Sandersville, Georgia  
5 31082.

6

7           **Q. HAVE YOU PREVIOUSLY TESTIFIED IN THIS PROCEEDING?**

8           A. Yes, I testified on behalf of Sandersville Railroad Company in the  
9 Company’s direct case, via written direct testimony pre-filed on July 21, 2023.

10

11           **Q. DO YOU HAVE ANY CORRECTIONS OR CHANGES TO YOUR**  
12 **DIRECT TESTIMONY PRE-FILED ON JULY 26, 2023, OR CLARIFICATIONS**  
13 **REGARDING THE AMENDED PETITION APPROVAL TO ACQUIRE REAL**  
14 **ESTATE BY CONDEMNATION?**

15           A. Yes. The volume of Heidelberg traffic that the Hanson Spur would keep off  
16 the roads was estimated in the pre-filed testimony of Mr. Scott Dickson, President of  
17 Heidelberg Materials (“Heidelberg”) Southeast Region, to be up to 400,000 tons per  
18 year. Previously, we had identified that volume to be 500,000 tons per year for  
19 purposes of calculating equivalent truck loads, which we estimated to be roughly 150  
20 truck trips per day based on a 23-ton truck load. To reflect Mr. Dickson’s estimate, I  
21 have provided here calculations showing the carloads required to move 400,000 tons

1 annually by rail and the one-way round-trip truckload equivalents.<sup>1</sup> Where we had  
 2 expected the Hanson Spur would handle the equivalent of 150 truckloads per day, we  
 3 now expect to handle the equivalent of roughly 130 trucks per day or over 30,000  
 4 trucks per year. The point is that any traffic handled by a railroad significantly  
 5 reduces the number of trucks on the road.

<b>Volume (tons)</b>	<b>Worked Weeks</b>	<b>Daily Volume (tons; rounded)</b>	<b>Daily One-Way Truck Movements (rounded)</b>	<b>Annual One-Way Truck Movements (rounded)</b>
400,000	52	1,538	128	33,333
400,000	50	1,600	133	33,333
350,000	52	1,346	112	29,167
350,000	50	1,400	117	29,167
300,000	52	1,154	96	25,000
300,000	50	1,200	100	25,000

6 I also want to note that we have learned from Mr. Dickson that many of the  
 7 carloads we had expected would otherwise move over the road if Sandersville  
 8 Railroad did not build the Spur may not move at all out of the Hanson Quarry (the  
 9 “Quarry”) (they may, however, move from other Heidelberg facilities). How many of  
 10 the Quarry’s new shipments will move by road if we do not build the Spur will depend  
 11 on market factors. Accordingly, in the table above, we have shown figures based on a

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<sup>1</sup> Each truck delivery requires two individual truck trips—one that goes to the location with a full truckload and one that returns with an empty truckload, or vice versa (i.e., one travels to the Quarry empty and one leaves with a full truckload). My estimates of the daily and annual truck trips in the table account for both trips.

1 range of additional volumes from the Hanson Quarry.

2

3 **Q. THERE HAS BEEN A LOT OF RESPONSIVE TESTIMONY FILED**  
4 **REGARDING THE PURPOSE AND USE OF THE SPUR. FOR CLARITY,**  
5 **WHAT IS THE PURPOSE OF THE HANSON SPUR?**

6 A. The Hanson Spur (the “Project” or “Spur”) will open a new switching track  
7 to connect the Hanson Quarry to the Camak subdivision of CSX Transportation, Inc.  
8 (“CSXT”). By providing the capacity to switch rail cars for Heidelberg Materials and  
9 other shippers between the Quarry area and CSXT’s trunk line railroad, Sandersville  
10 Railroad will open new channels of trade to farmers, industries, and companies in  
11 eastern middle Georgia. The region desperately needs the economic boost. There is  
12 no such connection in eastern middle Georgia with the switching services to and from  
13 CSXT that Sandersville Railroad (the “Railroad” or “Sandersville Railroad”) will  
14 provide over the Spur.

15 Currently, there are five (5) companies (Heidelberg Materials, Pittman  
16 Construction, Southern Chips, Revive Milling, and Veal Farms Transload) that plan  
17 to utilize the Spur to access the CSXT line. There will be facilities along the Spur at  
18 or near the Quarry that will permit loading and unloading of goods (a) directly  
19 between a rail car and a production facility, or (b) between a rail car and a truck  
20 (which is called “transloading”). Inevitably, these companies will drive economic  
21 development in Hancock County, where industry and good-paying jobs are  
22 desperately needed. And, we expect that development to attract more shippers. We

1 are very proud of this economic development. It is a proper accommodation of our  
2 business to provide channels of trade on our mainline and, if the Georgia Public  
3 Service Commission (the “PSC” or the “Commission”) grants our petition, as  
4 amended, on the Hanson Spur.

5

6 **Q. IS IT IMPORTANT TO THE STATE OF GEORGIA TO CONTINUE**  
7 **TO OPEN CHANNELS OF TRADE?**

8 A. Yes, it is. Recently, the State of Georgia has focused on ensuring our  
9 infrastructure and logistics channels are keeping pace with the growing economy and  
10 population in the State of Georgia and southeastern United States. As a result of the  
11 commitment of our Governor, the General Assembly, and local jurisdictions to ensure  
12 the continued success and growth of Georgia, our state has been extremely fortunate  
13 to see tremendous population and economic growth.

14 In 2019, the Georgia Commission on Freight and Logistics (the “F&L  
15 Commission”), created by 2019-2020 House Resolution 37,<sup>2</sup> submitted its report  
16 (the “F&L Report”).<sup>3</sup> The F&L Commission was created by the Georgia General  
17 Assembly “to study the freight and logistics network in the state, find ways to move  
18 freight more efficiently, and to spur economic growth and job creation.”<sup>4</sup> The F&L  
19 Commission included, among other members, now-Lt. Governor Burt Jones, Senators

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<sup>2</sup> 2019-2020 House Resolution 37.

<sup>3</sup> Rep. Kevin Tanner and Sen. Brandon Beach, *et al.*, Georgia Commission on Freight & Logistics, *Report Submitted pursuant to 2019 House Resolution 37*, available at: [https://www.house.ga.gov/Documents/CommitteeDocuments/2019/Freight\\_and\\_Logistics/Final\\_Report\\_Freight\\_and\\_Logistics.pdf](https://www.house.ga.gov/Documents/CommitteeDocuments/2019/Freight_and_Logistics/Final_Report_Freight_and_Logistics.pdf) (last accessed September 26, 2023).

<sup>4</sup> *Id.* at 3.

1 Brandon Beach, and Steve Gooch, Representatives Kevin Tanner, Calvin Smyre, and  
2 Dale Rutledge.<sup>5</sup>

3 After touring the state and studying the prevailing transportation and logistics  
4 issues, the F&L Commission emphasized that the rise in e-commerce, Georgia’s  
5 prosperous economy, business friendly environment, and growing population  
6 necessitate the need for a plan regarding freight and logistics.<sup>6</sup> The F&L Report noted  
7 that many issues face the trucking industry in Georgia, including driver shortages,  
8 hours of service rules, driver detention, and infrastructure and congestion issues.<sup>7</sup>

9 The F&L Report noted that “[r]ail moves freight efficiently and saves the  
10 shipper money. By putting tonnage on rail there is also the added benefit [to the  
11 public] of less congestion, reduced emissions, and reduced wear and tear on the  
12 pavement.”<sup>8</sup> The report also recognized that short line railroads “move freight in and  
13 through rural parts of the state, provide connection to the longer lines, and bring  
14 economic benefits to the counties through which they run.”<sup>9</sup> The F&L Commission  
15 “urged” the General Assembly of Georgia “to consider the passage of a bill that  
16 provides for budget line items specifically for freight rail appropriations [and] . . . to  
17 find ways to increase investment in the freight rail network in order to diminish truck  
18 congestion on our highways.”<sup>10</sup>

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<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 5-6.

<sup>9</sup> *Id.* at 6

<sup>10</sup> *Id.* at 8.

1           The F&L Commission was extended, 2019-2020 HR 935,<sup>11</sup> and issued another  
2 report (the “2020 F&L Report”) in 2020.<sup>12</sup> The 2020 F&L Report noted that “[r]ail  
3 infrastructure improvement is essential for economic growth in both rural and urban  
4 areas of Georgia.”<sup>13</sup> Its recommendations regarding Georgia’s railroad networks  
5 include:

6           (1) “[d]oubl[ing] the amount of freight currently being carried on rail from  
7           17 to 35 percent;”<sup>14</sup> and

8           (2) legislative exploration of ways to devote public funds to all forms of  
9           transportation infrastructure.<sup>15</sup>

10 Also in the 2020 F&L Report was the “Freight and Logistics Subcommittee Report:  
11 Funding Georgia's Infrastructure Future,”<sup>16</sup> which “focused on the compelling need  
12 for accelerating freight and logistics infrastructure throughout the State.”<sup>17</sup>

13

14           **Q. IS THE ECONOMIC FEASIBILITY OF THE HANSON SPUR**  
15 **PERTINENT TO THE GEORGIA PUBLIC SERVICE COMMISSION’S**  
16 **DECISION HERE?**

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<sup>11</sup> 2019-2020 House Resolution 935.

<sup>12</sup> Rep. Kevin Tanner and Sen. Brandon Beach, *et al.*, Georgia Commission on Freight & Logistics, *Report Submitted pursuant to 2020 House Resolution 935*, available at: [https://www.house.ga.gov/Documents/CommitteeDocuments/2020/Freight\\_and\\_Logistics/Georgia\\_Freight\\_and\\_Logistics\\_Final\\_Report\\_2020.pdf](https://www.house.ga.gov/Documents/CommitteeDocuments/2020/Freight_and_Logistics/Georgia_Freight_and_Logistics_Final_Report_2020.pdf) (last accessed September 26, 2023).

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 7.

<sup>16</sup> *Id.* at 9, *et seq.*

<sup>17</sup> *Id.* at 10.

1           A. To the extent that is a legal question; I will leave the legal answers to  
2 counsel. As a practical matter, however, I suppose it depends on what one means by  
3 feasibility.

4           Hypothetically, if there were a genuine question as to whether a project could  
5 possibly serve a public purpose because it manifestly could not attract financing or  
6 could not be operated if built, then one might wonder why the Commission would  
7 consider awarding condemnation authority. However, it is my understanding the  
8 Commission historically has not engaged in such an inquiry.

9           In our case, however, those are not meaningful questions. My family, which  
10 owns the Sandersville Railroad, plans to contribute all the capital to Sandersville  
11 Railroad to finance the construction of the Hanson Spur. We will not require outside  
12 investment. As shown by the numerous customers that have committed to using the  
13 Hanson Spur and have chosen to testify in this docket in support of the Hanson Spur,  
14 there is also no genuine question that there is a market to sustain the public purposes  
15 that will be met by the Spur. Otherwise, we would not have done the extraordinary  
16 amount of work we have done to date.

17

18           **Q. HAVE YOU REVIEWED THE TESTIMONY OF MR. GARY HUNTER**  
19 **FILED IN THIS PROCEEDING?**

20           A. Yes.

21

1           **Q. DO YOU UNDERSTAND THAT SANDERSVILLE RAILROAD, BY**  
2 **COUNSEL, INTENDS TO OBJECT TO MR. HUNTER’S TESTIMONY ON THE**  
3 **GROUNDS IT IS FOUNDED ON ERRONEOUS LEGAL OPINIONS,**  
4 **CONTAINS ULTIMATE LEGAL CONCLUSIONS THAT ARE ERRONEOUS**  
5 **BECAUSE THEY ARE BASED ON THOSE FALSE OPINIONS AND ON**  
6 **FACTS NOT IN EVIDENCE, AND THAT THE QUESTION OF THE**  
7 **FEASIBILITY OF THE HANSON SPUR PROJECT IS IRRELEVANT TO**  
8 **WHETHER THE PROJECT WILL SERVE AND CONSTITUTE A PUBLIC**  
9 **USE UNDER GEORGIA LAW?**

10           A. Yes.

11

12           **Q. DO YOU RECALL THAT MR. HUNTER ASSERTS THAT THE**  
13 **PROJECT IS NOT ECONOMICALLY FEASIBLE?**

14           A. Yes.

15

16           **Q. WHAT IS YOUR PERSPECTIVE ON HIS ASSERTIONS?**

17           A. Mr. Hunter is a forensic consultant. To my knowledge, he has no direct  
18 knowledge of the Sandersville Railroad, our customers, the markets our shippers  
19 serve, or the eastern middle Georgia region or its economy. His speculative opinions  
20 have nothing to do with the real-world circumstances of our Project, with one likely-  
21 unintended exception: he demonstrates the ability of our Project to serve public  
22 purposes.

1           If this Commission grants Sandersville Railroad condemnation authority, and  
2 we satisfy the other prerequisites to construction, we will build and operate the  
3 Hanson Spur. We have worked to develop new customers. We have worked with those  
4 customers, and especially Pittman Construction and Heidelberg, to identify ways  
5 they can improve their business by using the Spur. We have worked with Heidelberg  
6 Materials to reduce the noise and other impacts of the existing Hanson Quarry and  
7 minimize those same impacts from rail operations. To that end, Sandersville Railroad  
8 and Heidelberg will build berms and relocate quarry operations.

9           In addition, at the request of some of the Respondents, Sandersville Railroad  
10 realigned the original plan for the Spur to reduce community impacts while  
11 protecting the regions' water resources and wetlands. We have secured the required  
12 environmental and Georgia Department of Transportation ("GDOT") permits to cross  
13 Highway 16. We have conducted all required engineering studies. And, we have  
14 worked with Heidelberg, other potential shippers, and CSXT to assure the Spur will  
15 provide a win-win, privately-financed, economic, and environmentally sensitive  
16 development opportunity for our business, CSXT, our customers, and Sparta,  
17 Hancock County, and the surrounding region.

18

19           **Q. HAS MR. HUNTER'S TESTIMONY AFFECTED YOUR**  
20 **INVESTMENT DECISION?**

21           A. Yes. He has reinforced our judgement that investing in this Project is  
22 necessary and the best way to accommodate and grow our company's business. Our

1 business is rail transportation, and the Spur is necessary for the proper  
2 accommodation of our business.

3 This may seem like a surprising conclusion. After all, Mr. Hunter's testimony  
4 is intended to create the opposite impression and he has based his testimony on  
5 several false assumptions. For example, he exaggerates the Project's costs and  
6 minimizes its reasonably expected revenues. Even so, his testimony shows that the  
7 Project is sufficiently economically viable to eliminate any concerns that Sandersville  
8 Railroad cannot provide channels of trade and a sustainable service to the shipping  
9 public, spur economic development, and take trucks off the road.<sup>18</sup>

10 The Hanson Spur can operate just on the volumes Mr. Hunter expects to move  
11 over the Spur, before considering any added revenues from other customers using the  
12 Spur. This means that, regardless of whether Sandersville Railroad ever makes an  
13 adequate return on its investment, the public interest in increased commerce and  
14 channels of trade and economic development will be served. And if our other potential  
15 customers can pay rates above the variable costs of adding their traffic to our  
16 Heidelberg trains, they will be better off than using trucks or an independent  
17 transload with CSXT and so will we.

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<sup>18</sup> Mr. Hunter seems to think that adding trucks to the road to facilitate a transload at Sparta is a good thing, which I cannot understand, when he seems otherwise dismissive of reducing truck traffic. He also seems to think that, by providing new market opportunities for Southern Chips, Revive Milling, and Veal Farms, we will be adding substantial new truck volumes. But, they are not substantial volumes. Train carloads will increase by a few a week and these customers' limited truck traffic will not move through Sparta, but primarily through low density areas to reach the Quarry.

1           **Q. CAN YOU EXPLAIN HOW YOU REACHED THAT CONCLUSION?**

2           A. Yes. My conclusion is based on the well-known economics of railroads.  
3 Railroads have a higher proportion of fixed costs than most industries. These are the  
4 capital costs that Mr. Hunter mentions—such as the costs of rights of way, of  
5 surveying and excavating rights of way, of designing, engineering, and constructing  
6 track structure, ties, rails, and things like road crossings, signals, and culverts. Once  
7 these capital investments are made, they are largely sunk, meaning they are the  
8 same whether the line carries lots of traffic or minimal traffic and cannot be recovered  
9 practicably except through earnings from railroad revenues. Once those costs are  
10 sunk, the railroad can run a long time without recovering an adequate return on the  
11 original capital investment.

12           Variable costs are a different category of expense. The variable costs of moving  
13 the traffic include fuel, labor, and maintenance. If these are covered by revenues, the  
14 Railroad will operate until it needs more capital. The Railroad has the ability to  
15 provide that capital, if and when it is needed. Therefore, if Mr. Hunter is correct and  
16 our only customer ends up being Heidelberg, the Hanson Spur will stay in service if  
17 Heidelberg wants to pay any amount over the variable cost of our service.  
18 Sandersville Railroad, however, expects to attract other customers, including those  
19 who have testified that they will use the Spur in this docket. Additionally,  
20 Sandersville Railroad expects to attract sufficient revenues above variable cost from  
21 Heidelberg and other shippers to reward our investment and add to the economic  
22 health of the region.

23           Mr. Hunter's conclusions about Sandersville Railroad's operating costs are

1 based on (1) Class I railroad costs, which are much higher than Sandersville  
2 Railroad’s true operating costs, and (2) his attribution of capital costs to the Project  
3 that will not be incurred. However, his assessment that we will earn rates that will  
4 cover variable costs and contribute to capital illustrates this basic principle of  
5 railroad economics: even if Sandersville Railroad is wrong about the capital  
6 requirements to construct the Project, the Hanson Spur can still be kept in operation  
7 for the foreseeable future because it can cover its variable costs.

8 Most important, Mr. Hunter’s testimony shows that if we:

9 (1) carry only Heidelberg’s traffic,

10 (2) assume our costs are as high as those of a Class I railroad, and

11 (3) charge rates that he says are comparable to the costs of a transload  
12 operation,

13 we can still cover variable costs and make an annual contribution to capital of  
14 \$180,294 in 2024 up to \$379,852 in 2043. The switching service will provide a return  
15 on capital into the foreseeable future, even if we get no additional traffic.

16 So, if Mr. Hunter is concerned that our Project will never provide the benefits  
17 we expect, he need not worry. His own testimony shows that the Hanson Spur will  
18 deliver its promised benefits. In the worst-case scenario, Sandersville Railroad might  
19 not recover its investment for years, but it will cover more than its variable cost. As  
20 a result, it will be able to serve its customers and community effectively. In that sense  
21 of the word, the Project is categorically “feasible”.

22

1           **Q. DO YOU THINK THE COMMISSION SHOULD EXPECT THIS**  
2 **PESSIMISTIC SCENARIO?**

3           A. No. The Commission can be certain that, from the perspective of the public  
4 interest, the pessimistic scenario Mr. Hunter misguidedly forecasts would be  
5 sustainable for a long time. We expect a much more positive outcome, however, as  
6 the testimony of numerous customers in support of the Project demonstrates.  
7 Otherwise, we would not be investing in the Project. In the more likely scenario,  
8 which includes corrected and additional facts to those offered by Mr. Hunter, we will  
9 be well on our way to recovering our capital just based on the following, which we  
10 think are the more likely results:

11           (1) Sandersville Railroad’s capital costs will be lower than he projects.

12           (2) Sandersville Railroad’s operating costs will be lower than the Class I  
13           railroad costs he uses in his calculations.

14           (3) Sandersville Railroad’s rates to Hanson will be higher than Mr. Hunter  
15           projects.

16           (4) Contrary to Mr. Hunter’s assertion, Heidelberg’s capital requirements  
17           will be lower than the costs its neighboring competitor, Vulcan Materials  
18           (“Vulcan”), has incurred already. Unlike Vulcan, Heidelberg will not  
19           need unit train operations that require the formation of 100 car trains.  
20           Sandersville Railroad will run small daily trains. This will allow CSXT  
21           to add Hanson’s cars to its trains already carrying Vulcan’s cars and  
22           therefore lower CSXT’s overall per car costs for both shippers.

1 (5) Mr. Hunter’s notion, that we would hold Heidelberg’s cars to build a  
2 single weekly train<sup>19</sup> is out of step with modern railroad best practices.  
3 This is often called “Precision Scheduled Railroading” or “PSR”, which  
4 requires services that optimize efficiency throughout the supply chain.  
5 Here, for example, by running daily trains, we can more efficiently meet  
6 Heidelberg’s and CSXT’s requirements, provide better service, and avoid  
7 some of the large expenditures.

8 (6) Because other shippers will bear the capital costs of any special facilities  
9 they may require to use our switching services, our variable costs of  
10 serving those shippers, over and above the cost of serving our baseload  
11 traffic, will be low.

12 (7) As shown in my table below, we expect Sandersville Railroad’s capital  
13 costs will be roughly 26% lower than Mr. Hunter’s projection.

14  
15 **Q. HOW DID YOU REACH YOUR CONCLUSION REGARDING**  
16 **CAPITAL COSTS?**

17 A. Mr. Hunter’s estimated capital cost projects are far higher than ours for two  
18 principal reasons: (1) he includes costs that we will not be incurring, and (2) he grossly  
19 overstates the costs we expect to incur. He expects our capital costs to be

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<sup>19</sup> See Pre-filed Responsive Expert Testimony of Gary Hunter, *In re: Sandersville Railroad Company’s Petition for Approval to Acquire Real Estate by Condemnation*, Docket 45045, Document 205550 (August 25, 2023) (“Testimony of Gary Hunter”) at 14:19-23.

1 \$20,627,082.00.<sup>20</sup> We expect them not to exceed roughly \$15.2 million.<sup>21</sup> The table  
 2 below shows Mr. Hunter’s estimates compared to our estimates. Our estimates are  
 3 based on our experience and that of our local engineering advisors.

<b>Mr. Hunter’s Cost Component</b>	<b>Mr. Hunter’s Cost Estimate</b>	<b>Sandersville Railroad’s Cost Component</b>	<b>Sandersville Railroad’s Cost Estimate</b>
Main Line Track 4.5 miles	\$ 11,049,280.00	Land Acquisition	\$ 327,000.00
Highway 16 Crossing	\$ 2,000,000.00	Wetland Credits	\$ 1,500,000.00
CSXT Interchange Tracks	\$ 3,610,000.00	Erosion Control	\$ 200,000.00
Two Rail Bridges	\$ 214,000.00	Drainage	\$ 200,000.00
At-Grade Crossings	\$ 231,441.00	Culverts and Bridges	\$ 2,200,000.00
Train Building Yard	\$ 2,953,800.00	Grading and Subsurface Construction	\$ 4,500,000.00
Land Acquisition	\$ 568,561.00	At-Grade Crossings	\$ 600,000.00
		Above Surface Construction 4.5 miles	\$ 4,752,000.00
		Sidetrack construction	\$ 250,000.00
		CSXT Connection	\$ 650,000.00
<b>Total Estimated Capital Costs:</b>	<b>\$ 20,627,082</b>	<b>Total Estimated Capital Costs:</b>	<b>\$ 15,179,000</b>

4 **Q. WHY DO YOU EXCLUDE THE TRAIN FORMATION COSTS**  
 5 **ATTRIBUTED TO THE PROJECT BY MR. HUNTER?**

6 A. We exclude them because, as I noted above, they need not be incurred. First,  
 7 as I explained, Heidelberg will not need a train building yard to accommodate unit  
 8 trains because we will be running daily train service. Second, we will instead build

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<sup>20</sup> *Id.* at Ex. 34, p. 29.

<sup>21</sup> Mr. Hunter suggests we claimed our capital costs would be \$7.4 million. *Id.* at 9:16-18. Sandersville Railroad has no idea where that number came from.

1 an extra siding—approximately 1,000 feet long to accommodate our limited switching  
2 requirements for Heidelberg and Pittman Construction and transload operations for  
3 other shippers.

4

5 **Q. WHY DO YOU EXCLUDE THE COSTS ATTRIBUTED TO THE**  
6 **PROJECT BY MR. HUNTER THAT WILL BE INCURRED BY SHIPPERS?**

7 A. Those costs are not included in our Project. They will be incurred by our  
8 shippers to benefit their business.

9

10 **Q. MR. HUNTER ASSERTS THAT TRANSLOADING TO CSXT IS A**  
11 **BETTER TRANSPORTATION OPTION FOR HEIDELBERG THAN THE**  
12 **HANSON SPUR; DO YOU AGREE?**

13 A. No. This is another of Mr. Hunter’s theoretical notions that are based on  
14 assumptions inconsistent with my real-world understanding. Let me explain. Our  
15 arrangements with Heidelberg are that we will provide an interim-only transloading  
16 facility to CSXT to permit Heidelberg to begin developing its new capacity. However,  
17 we understand that Heidelberg’s long-term plans are contingent on realizing the  
18 benefit of all-rail rather than transload service. This includes its plans to maximize  
19 the efficiency of the Quarry, construct berms to reduce the noise impact of its  
20 operations on nearby residents, move its crushing mill further away from nearby  
21 residents, and realize the environmental benefits of rail service.

22 Mr. Hunter identifies end-to-end train service as a competitive advantage that

1 Vulcan has now. He ignores the fact that Heidelberg would enjoy the same advantage  
2 if the Spur is built. Also, he may not be aware that Heidelberg is trying its hardest to  
3 reduce its environmental impact as much as possible while staying in the market.  
4 Heidelberg knows that an all-rail service is the best way to do that.

5 By contrast, if this Commission denies our opportunity to build the Hanson  
6 Spur, Heidelberg would be unlikely to make as many expenditures as possible to  
7 increase efficiencies and reduce environmental impacts. It would choose instead to  
8 truck as much of its product as could be marketed using that more expensive mode of  
9 transportation, leading to thousands of trucks moving over the roads next to the  
10 Respondents', Intervenors', and others' local residential properties.

11

12 **Q. CAN PITTMAN CONSTRUCTION'S REQUIREMENTS BE MET BY**  
13 **TRANSLOADING FROM CSXT AT SPARTA?**

14 A. No, Pittman Construction will be moving tank cars of liquid asphalt to the  
15 Quarry, where it will heat those cars to liquify the petroleum for unloading and  
16 mixing with materials from the Quarry to form asphalt for roadbuilding.

17 Heating the material is necessary to load or unload it and is expensive and  
18 cumbersome. Those tanks cars—roughly two per week—are now shipped by rail from  
19 a refinery to Lithonia, GA. There, the material is heated in order to be unloaded and  
20 transloaded to trucks. Once the trucks arrive at the Quarry, they must in turn be  
21 heated to be unloaded.

22 The Spur would eliminate the intermediate step of heating and transloading

1 from rail to trucks at Lithonia. The liquid asphalt could travel all the way from the  
2 refinery by rail. Contrary to Mr. Hunter’s assertion, it would make no sense—due to  
3 space constraints and the need for capital and operating expenditure—for Pittman to  
4 add yet another heating and transloading facility at Sparta as opposed to continue  
5 its current practice if the Spur were not built.

6

7 **Q. MR. HUNTER ARGUES THAT, RATHER THAN UTILIZING THE**  
8 **HANSON SPUR, VEAL FARMS TRANSLOAD, REVIVE MILLING, AND**  
9 **SOUTHERN CHIPS COULD JUST AS EASILY SEND THEIR PRODUCTS TO**  
10 **SPARTA FOR TRANSLOADING TO CSXT AND THAT SHIPPING BY TRUCK**  
11 **FROM SANDERSVILLE TO THE HANSON QUARRY WILL ADD MORE, NOT**  
12 **FEWER, TRUCKS TO THE ROAD. HOW DO YOU RESPOND?**

13 A. Mr. Hunter is correct that trucking from the Sandersville area to either  
14 CSXT or Sandersville Railroad will add a few more trucks to the road. Veal Farms,  
15 for example, is likely to move a few rail cars per week over the Spur to CSXT and it  
16 will require roughly 4-5 trucks per rail car to move that traffic to the transload facility  
17 near the Quarry, well south of Sparta. However, those trucks would not travel  
18 through the area between the Quarry and Sparta, which is more densely populated  
19 than the area between Sandersville and Sparta.

20 Contrary to Mr. Hunter’s suggestion, if Sandersville Railroad does not build  
21 the Hanson Spur, we do not expect much of that new traffic from Veal Farms, for  
22 example, to move by rail. The poor economics of transloading would reduce the access

1 to new markets that these shippers are seeking.

2           Conversely, transloading at the Quarry will have several advantages for Veal  
3 Farms Transload and others that hope to ship over the Spur and CSXT. The Spur  
4 will allow their traffic to be handled on the daily trains destined to and from CSXT  
5 from the Quarry in the most efficient manner possible. That would minimize the cost  
6 of service for CSXT and these shippers and increase their opportunities for new  
7 markets.

8

9           **Q. DO YOU BELIEVE MR. HUNTER IS GENUINELY CONCERNED**  
10 **THAT OUR PROJECT WILL NEVER PROVIDE THE BENEFITS**  
11 **SANDERSVILLE RAILROAD EXPECTS FROM THE PROJECT?**

12           A. No, I believe he is telling a speculative story to support the Institute for  
13 Justice’s transparent efforts to change federal and state constitutional law regarding  
14 condemnation. If he were genuinely concerned, he would have recognized that his  
15 own testimony shows there is no reason to worry. The Hanson Spur will deliver its  
16 promised public benefits.

17

18           **Q. WHAT DO THINK ABOUT MR. HUNTER’S CONCERN THAT YOU**  
19 **WILL NOT ATTRACT THE NECESSARY CAPITAL TO FUND THE**  
20 **PROJECT?**

21           A. As Mr. Hunter makes clear, that concern is speculative. In his testimony he  
22 states that, “[a]lthough Sandersville has stated it will be financing the project itself,

1 . . . the project *may* require additional funding from other sources.”<sup>22</sup> His speculation  
2 has no basis in fact. Sandersville Railroad is paying for this Project, without any  
3 “investment partners and shippers, financing from a private lender, or public  
4 funding.” *Id.* at 11:22. Neither is the Sparta Hancock Development Authority  
5 providing economic support. *Id.* at 15:17-19.

6 Mr. Hunter makes it clear he would not want to make an investment in our  
7 project. Fortunately for the Project, Georgia commerce, and Hancock County, neither  
8 he, nor any other third party, will be needed to construct the Hanson Spur.  
9 Sandersville Railroad, which is wholly owned by members of the Tarbutton family,  
10 will fund the entire project.

11  
12 **Q. MR. HUNTER THINKS YOU NEED TO PROVE THE FEASIBILITY**  
13 **OF THE PROJECT TO SHOW THAT THE PROJECT WILL SERVE A PUBLIC**  
14 **USE. DO YOU AGREE?**

15 A. That seems like a legal conclusion. However, as a layman, I do not agree  
16 with him that feasibility and public use are the same thing. Regarding public use, we  
17 have shown the Project will provide channels of trade and is necessary to properly  
18 accommodate our railroad business. As I understand Georgia law, the Georgia  
19 legislature has already decided this requirement is sufficient to meet the “public use”  
20 requirements of the Georgia Constitution. Mr. Hunter incorrectly, and without the  
21 requisite legal expertise, or any knowledge of our railroad, concludes the Project is

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<sup>22</sup> *Supra* note 19, Testimony of Gary Hunter, at 5:5-7 (emphasis added).

1 not necessary for the proper accommodation of our business.<sup>23</sup> For all the reasons I've  
2 explained, he's wrong.

3 Because the Project will provide channels of trade and is necessary to properly  
4 accommodate our business, which already serves a public purpose, it has a "public  
5 use."<sup>24</sup>

6 Regarding feasibility, Sandersville Railroad plans to build the Project and I  
7 have explained why we are confident it will be a profitable venture.

8

9 **Q. WHY, GIVEN THAT MR. HUNTER THINKS YOU CANNOT**  
10 **RECOVER YOUR INVESTMENT IN THE PROJECT, WOULD YOU GO**  
11 **FORWARD?**

12 A. Fortunately, I do not have to persuade Mr. Hunter that we will recover our  
13 investment. He is being paid to raise doubts about the prospects for our Project. The  
14 only people making investment decisions for Sandersville Railroad sit on its Board of  
15 Directors. They have already been persuaded.

16 It does not appear that Mr. Hunter has experience developing an  
17 entrepreneurial greenfield railroad development project. That may explain why he

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<sup>23</sup> *Id.* at 22:1-2.

<sup>24</sup> One of Mr. Kochan's articles that he cited in his testimony (Donald J. Kochan, "Public Use" and the Independent Judiciary: Condemnation in an Interest-Group Perspective, 3 TEX. REV. L. & POL. 49 (1998)) explains that that **modern courts do not require a public use to be in actual use by the public**. Instead, public uses are understood to be broad in scope—often as uses serving public purposes, needs, or interests. As the phrase is commonly understood, the Project will be a "public use" because it will provide channels of trade as well as benefits to Hancock County's and eastern middle Georgia's citizens and local businesses.

1 seems to think “feasibility” for railroad construction should only occur if his  
2 hypothetical investors in a project like ours would be guaranteed what he believes to  
3 be a reasonable return on their investment. Satisfaction of hypothetical investors  
4 based on Mr. Hunter’s litmus test of a reasonable return is not required, and that is  
5 not what’s going on here.

6 My family has been operating Sandersville Railroad as a private, for-profit  
7 enterprise for 130 years. We are a consistently profitable company and have been for  
8 decades. Our satisfied customers are the proof that we conduct our business  
9 successfully.

10 We are making this investment based on our judgment, informed by our  
11 experience operating in east middle Georgia for all these years, that the Hanson Spur  
12 will also be profitable. We made our decision based on:

- 13 (1) Our past experience;
- 14 (2) Our assessment of whether the service will attract and keep satisfied  
15 customers over the long run; and
- 16 (3) A multi-year process of assessing the costs of building and operating the  
17 Spur according to the highest possible environmental standards.

18 Like all plans, this is admittedly somewhat speculative. Unknown, unforeseen  
19 factors can disrupt the best projections. But our informed speculation is of the same  
20 sort that built most railroads in this country, except we have the added benefit of  
21 state of the art engineering, surveying, and railroad technology. The history of  
22 successful railroading, including Sandersville Railroad’s success, demonstrates

1 conclusively that Mr. Hunter’s assertion that “[r]ail is not a ‘build it and they will  
2 come’ industry”<sup>25</sup> is simply wrong.

3

4 **Q. GIVEN THAT SANDERSVILLE RAILROAD WILL RISK A LOT OF**  
5 **CAPITAL, SHOULD THE PUBLIC BE WORRIED THAT THEY WILL SHARE**  
6 **THAT RISK?**

7 A. No. Sandersville Railroad is taking all the downside risk. As even Mr.  
8 Hunter has shown, the Commission can reasonably expect that the public will get the  
9 projected benefits of the Project whether or not our investment pays off for the  
10 Sandersville Railroad. This is because we can continue to compete with trucks for the  
11 foreseeable future by charging rates that, by Mr. Hunter’s analysis, cover more than  
12 our variable costs of service.

13 Sandersville Railroad’s incentives and Hancock County’s incentives are  
14 aligned. We have every incentive to work hard to develop new business for Hancock  
15 County. As we have in Sandersville and Washington County for over a century, in  
16 Hancock County, we will develop economic opportunities for ourselves, our  
17 customers, and the communities we serve, thereby ensuring the long-term success of  
18 the Hanson Spur.

19

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<sup>25</sup> *Id.* at 12:3.

1           **Q. MR. HUNTER SEEMS TO THINK THAT CSXT MAY PRESENT AN**  
2 **OBSTACLE TO THE COMPLETION OF THE HANSON SPUR. IS THAT**  
3 **CONSISTENT WITH YOUR UNDERSTANDING?**

4           A. No. CSXT supports the project. They have been working closely with us in  
5 developing our Project.

6  
7           **Q. WHAT IS THE ROLE OF THE SPUR AND SANDERSVILLE**  
8 **RAILROAD'S SWITCHING SERVICES IN THE NATIONAL RAILROAD**  
9 **NETWORK?**

10          A. Railroads are a regulated industry.<sup>26</sup> The Federal Government agency that  
11 regulates railroads, the U.S. Surface Transportation Board (“STB”) has exclusive  
12 jurisdiction over transportation by rail that is part of the interstate rail network. The  
13 Hanson Spur will connect with that network via CSXT’s Camak subdivision.

14          On the Hanson Spur, Sandersville Railroad will be operating as a private  
15 switch carrier. In this more limited scope of operation, Sandersville Railroad will offer  
16 its switch services to any shipper that wants to negotiate a contract rate on mutually  
17 satisfactory terms. By operating in this manner, Sandersville Railroad can most  
18 efficiently facilitate carriage to and from the Spur by CSXT.

19  
20          **Q. WHY ARE YOU EXPLAINING THIS TO THE COMMISSION?**

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<sup>26</sup> See, e.g., FRANK N. WILNER, RAILROADS & ECONOMIC REGULATION (AN INSIDER’S ACCOUNT) (Simmons-Boardman Books, Inc. 2023).

1           A. My purpose is not to testify on the regulatory scheme, but to explain why I  
2 believe many of Mr. Hunter’s assertions are erroneous. They are based on  
3 misunderstandings of the role of Sandersville Railroad’s switching service over the  
4 Spur. In particular, he incorrectly testifies regarding:

5           (1) the type of rates he says we will charge;<sup>27</sup>

6           (2) the nature of our operations;<sup>28</sup>

7           (3) the amount of our costs;<sup>29</sup> and

8           (4) the notion that we will not connect with CSXT.<sup>30</sup>

9           I also want the Commission to understand that Sandersville Railroad will be  
10 serving the same public purpose—providing channels of trade over the national rail  
11 network—as CSXT, the trunk line railroad to which we will connect. Indisputably,  
12 rail transportation over the national network is regarded as a public use vested with  
13 the public interest. Nonetheless, Mr. Hunter and other witnesses seek to challenge  
14 the public use of the Hanson Spur.

15           Intervenors’ witness Mr. Kochan not only ignores the role our switching  
16 services will play in the national rail network, but he also advocates an entirely  
17 different meaning of “public use” from the one his published writings recognize is now  
18 the law.<sup>31</sup>

19           Taking Mr. Hunter’s and Mr. Kochan’s misguided views together, I infer they

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<sup>27</sup> *Id.* at 12:10.

<sup>28</sup> *Id.* at 10:20-23, 14:19-23

<sup>29</sup> *Id.* at 10:23-11:1, 11:2-4.

<sup>30</sup> *Id.* at 14:12-18.

<sup>31</sup> *Supra* at n. 24.

1 are intended not to apply the law as written. They aim instead to support an  
2 ideological crusade by the Institute for Justice to make new federal constitutional  
3 law.<sup>32</sup> The Commission does not have before it a constitutional amendment or  
4 statutory amendment. Instead, we are asking the Commission whether the proposed  
5 Spur serves a public purpose under the existing law.

6

7 **Q. MR. HUNTER SEEMS TO THINK THE COMMISSION IS**  
8 **REQUIRED TO DETERMINE WHETHER THE PROJECT IS INVESTIBLE.**  
9 **DOES THAT MAKE SENSE TO YOU?**

10 A. No. Mr. Hunter has not properly framed the question. As I understand it,  
11 the question is whether the Project, *if built*, would serve a public purpose. My  
12 attorneys inform me this is the authority the legislature has given to the Commission.  
13 *If the PSC decides the Project will serve a public purpose, then we will have authority*  
14 *to condemn property for the Project.*

15 Railroads in America are private enterprises operating in the public interest.

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<sup>32</sup> Apparently, as Mr. Kochan has described in one of the articles he cites in his testimony (Donald J. Kochan, *“Public Use” and the Independent Judiciary: Condemnation in an Interest-Group Perspective*, 3 TEX. REV. L. & POL. 49 (1998)), the definition of “public use” in modern law differs from its pre-20<sup>th</sup> century definition. In a later article of his, also cited in his testimony (Donald J. Kochan, *The [Takings] Keepings Clause: An Analysis of Framing Effects from Labeling Constitutional Rights*, 45 Fla. St. U. L. Rev. 1021 (2018)), Mr. Kochan, drawing upon what I understand to be a cornerstone Supreme Court Decision (*Kelo v. City of New London*, 545 U.S. 469 (2005)), recognizes that the power of eminent domain today is wide in scope and embraces the broader concept of “public purpose.” This seems contrary to the limited “use by the public test” Mr. Kochan insists ought to be used by the Commission here. From my perspective, he is advocating a new constitutional interpretation.

1 Whether the Project will be developed and whether the property will in fact be  
2 condemned will be up to the business judgement of the parties financing the Project.  
3 In this case, it will be my family. We will take the risk. And, Mr. Hunter has shown  
4 that, if we go forward, the Project can serve its public purpose whether we make a  
5 good return on our investment or not. Our private investment decisions have nothing  
6 to do with the indisputable public purpose of the Hanson Spur.

7

8 **Q. ARE THERE ANY OTHER ELEMENTS OF MR. HUNTER'S**  
9 **TESTIMONY TO WHICH YOU WOULD LIKE TO RESPOND?**

10 A. Yes. Mr. Hunter makes many assumptions and assertions that have no  
11 factual relationship to our Project. I do not need to address all these assumptions and  
12 assertions. What matters is that they are not relevant to the Commission's  
13 determination of the Project's public use. The financial risks of the Project are being  
14 assumed by the Tarbutton family, the owners of the Sandersville Railroad. We do not  
15 plan on losing money, and Mr. Hunter has offered nothing that makes us doubt our  
16 plans. As a result, we believe the Commission can reasonably expect that, if we build  
17 the Hanson Spur, it will provide the benefits we have claimed.

18 There are, however, things about his testimony that seem notably far-fetched.

19 First, as a matter of personal privilege, I object to Mr. Hunter's prejudicial  
20 inclusion of photos in the body and exhibits of his testimony that show segments of a  
21 down-at-the-heels railroad. He says these are photos of segments of CSXT railroad. I  
22 do not know where those photos were taken, but they have nothing to do with

1 Sandersville Railroad. Our railroad is in excellent shape, and we will maintain the  
2 Hanson Spur in the same manner.

3 Second, our costs should not be conflated with Heidelberg's costs, as Mr.  
4 Hunter does in his testimony.<sup>33</sup> Those costs are exclusively Heidelberg's decision and  
5 based on its internal requirements.

6 Finally, Mr. Hunter seems to want to go back to the dark ages of hyper-  
7 regulation which led to the bankruptcy of many of the nation's largest railroads. He  
8 wants the PSC to second guess our private business decisions and whether we should  
9 be able to take a business risk that will benefit the public whether or not we succeed.  
10 I understand from counsel there is no legal basis for this notion under Georgia law.  
11 As a matter of policy, I hope the Commission will not go down that path. Doing so  
12 would likely assure no new railroads will ever again be built in Georgia with private  
13 capital, and, as Georgia's legislature has recognized, railroads and particularly short  
14 line railroads are vital to the states continued prosperity and growth.

15

16 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

17 A. Yes.

18

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<sup>33</sup> Testimony of Gary Hunter at 11:2-4.

**BEFORE THE  
GEORGIA PUBLIC SERVICE COMMISSION**

**In Re: Sandersville Railroad  
Company's Petition For Approval to  
Acquire Real Estate by  
Condemnation**

**Docket No.: 45045**

**CERTIFICATE OF SERVICE**

I certify that I have this day served a copy of the foregoing **REBUTTAL TESTIMONY OF BENJAMIN J. TARBUTTON, III** upon the following persons by causing electronic copies of the same to be transmitted to each party that has supplied a valid email address and upon all other parties via first class mail with adequate postage affixed thereon and deposited in the United States Mail addressed as follows:

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This 28th day of September 2023.



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