**BEFORE THE**

**GEORGIA PUBLIC SERVICE COMMISSION**

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| --- | --- |
| **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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# Q. Please state your name, title, and business address.

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

# Q. Have you previously testified in this proceeding?

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

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

A. Yes. The volume of Heidelberg traffic that the Hanson Spur would keep off the roads was estimated in the pre-filed testimony of Mr. Scott Dickson, President of Heidelberg Materials (“Heidelberg”) Southeast Region, to be up to 400,000 tons per year. Previously, we had identified that volume to be 500,000 tons per year for purposes of calculating equivalent truck loads, which we estimated to be roughly 150 truck trips per day based on a 23-ton truck load. To reflect Mr. Dickson’s estimate, I have provided here calculations showing the carloads required to move 400,000 tons annually by rail and the one-way round-trip truckload equivalents.[[1]](#footnote-3) Where we had expected the Hanson Spur would handle the equivalent of 150 truckloads per day, we now expect to handle the equivalent of roughly 130 trucks per day or over 30,000 trucks per year. The point is that any traffic handled by a railroad significantly reduces the number of trucks on the road.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Volume**  **(tons)** | **Worked Weeks** | **Daily Volume**  **(tons; rounded)** | **Daily One-Way Truck Movements**  **(rounded)** | **Annual One-Way Truck Movements**  **(rounded)** |
| 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 |

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

**Q. There has been a lot of responsive testimony filed regarding the purpose and use of the spur. For clarity, what is the purpose of the Hanson Spur?**

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

Currently, there are five (5) companies (Heidelberg Materials, Pittman Construction, Southern Chips, Revive Milling, and Veal Farms Transload) that plan to utilize the Spur to access the CSXT line. There will be facilities along the Spur at or near the Quarry that will permit loading and unloading of goods (a) directly between a rail car and a production facility, or (b) between a rail car and a truck (which is called “transloading”). Inevitably, these companies will drive economic development in Hancock County, where industry and good-paying jobs are desperately needed. And, we expect that development to attract more shippers. We are very proud of this economic development. It is a proper accommodation of our business to provide channels of trade on our mainline and, if the Georgia Public Service Commission (the “PSC” or the “Commission”) grants our petition, as amended, on the Hanson Spur.

**Q. Is it important to the State of Georgia to continue to open channels of trade?**

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

In 2019, the Georgia Commission on Freight and Logistics (the “F&L Commission”), created by 2019-2020 House Resolution 37,[[2]](#footnote-4) submitted its report (the “F&L Report”).[[3]](#footnote-5) The F&L Commission was created by the Georgia General Assembly “to study the freight and logistics network in the state, find ways to move freight more efficiently, and to spur economic growth and job creation.”[[4]](#footnote-6) The F&L Commission included, among other members, now-Lt. Governor Burt Jones, Senators Brandon Beach, and Steve Gooch, Representatives Kevin Tanner, Calvin Smyre, and Dale Rutledge.[[5]](#footnote-7)

After touring the state and studying the prevailing transportation and logistics issues, the F&L Commission emphasized that the rise in e-commerce, Georgia’s prosperous economy, business friendly environment, and growing population necessitate the need for a plan regarding freight and logistics.[[6]](#footnote-8) The F&L Report noted that many issues face the trucking industry in Georgia, including driver shortages, hours of service rules, driver detention, and infrastructure and congestion issues.[[7]](#footnote-9)

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

  The F&L Commission was extended, 2019-2020 HR 935,[[11]](#footnote-13) and issued another report (the “2020 F&L Report”) in 2020.[[12]](#footnote-14) The 2020 F&L Report noted that “[r]ail infrastructure improvement is essential for economic growth in both rural and urban areas of Georgia.”[[13]](#footnote-15) Its recommendations regarding Georgia’s railroad networks include:

1. “[d]oubl[ing] the amount of freight currently being carried on rail from 17 to 35 percent;”[[14]](#footnote-16) and
2. legislative exploration of ways to devote public funds to all forms of transportation infrastructure.[[15]](#footnote-17)

Also in the 2020 F&L Report was the “Freight and Logistics Subcommittee Report: Funding Georgia's Infrastructure Future,”[[16]](#footnote-18) which “focused on the compelling need for accelerating freight and logistics infrastructure throughout the State.”[[17]](#footnote-19)

**Q. Is the economic feasibility of the Hanson Spur pertinent to the Georgia Public Service Commission’s decision here?**

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

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

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

**Q. Have you reviewed the testimony of Mr. Gary Hunter filed in this proceeding?**

A. Yes.

**Q. Do you understand that Sandersville Railroad, by counsel, intends to object to Mr. Hunter’s testimony on the grounds it is founded on erroneous legal opinions, contains ultimate legal conclusions that are erroneous because they are based on those false opinions and on facts not in evidence, and that the question of the feasibility of the Hanson Spur project is irrelevant to whether the Project will serve and constitute a public use under Georgia law?**

A. Yes.

**Q. Do you recall that Mr. Hunter asserts that the Project is not economically feasible?**

A. Yes.

**Q. What is your perspective on his assertions?**

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

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

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

**Q. Has Mr. Hunter’s testimony affected your investment decision?**

A. Yes. He has reinforced our judgement that investing in this Project is necessary and the best way to accommodate and grow our company’s business. Our business is rail transportation, and the Spur is necessary for the proper accommodation of our business.

This may seem like a surprising conclusion. After all, Mr. Hunter’s testimony is intended to create the opposite impression and he has based his testimony on several false assumptions. For example, he exaggerates the Project’s costs and minimizes its reasonably expected revenues. Even so, his testimony shows that the Project is sufficiently economically viable to eliminate any concerns that Sandersville Railroad cannot provide channels of trade and a sustainable service to the shipping public, spur economic development, and take trucks off the road.[[18]](#footnote-20)

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

**Q. Can you explain how you reached that conclusion?**

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

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

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

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

1. carry only Heidelberg’s traffic,
2. assume our costs are as high as those of a Class I railroad, and
3. charge rates that he says are comparable to the costs of a transload operation,

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

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

**Q. Do you think the Commission should expect this pessimistic scenario?**

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

1. Sandersville Railroad’s capital costs will be lower than he projects.
2. Sandersville Railroad’s operating costs will be lower than the Class I railroad costs he uses in his calculations.
3. Sandersville Railroad’s rates to Hanson will be higher than Mr. Hunter projects.
4. Contrary to Mr. Hunter’s assertion, Heidelberg’s capital requirements will be lower than the costs its neighboring competitor, Vulcan Materials (“Vulcan”), has incurred already. Unlike Vulcan, Heidelberg will not need unit train operations that require the formation of 100 car trains. Sandersville Railroad will run small daily trains. This will allow CSXT to add Hanson’s cars to its trains already carrying Vulcan’s cars and therefore lower CSXT’s overall per car costs for both shippers.
5. Mr. Hunter’s notion, that we would hold Heidelberg’s cars to build a single weekly train[[19]](#footnote-21) is out of step with modern railroad best practices. This is often called “Precision Scheduled Railroading” or “PSR”, which requires services that optimize efficiency throughout the supply chain. Here, for example, by running daily trains, we can more efficiently meet Heidelberg’s and CSXT’s requirements, provide better service, and avoid some of the large expenditures.
6. Because other shippers will bear the capital costs of any special facilities they may require to use our switching services, our variable costs of serving those shippers, over and above the cost of serving our baseload traffic, will be low.
7. As shown in my table below, we expect Sandersville Railroad’s capital costs will be roughly 26% lower than Mr. Hunter’s projection.

**Q. How did you reach your conclusion regarding capital costs?**

A. Mr. Hunter’s estimated capital cost projects are far higher than ours for two principal reasons: (1) he includes costs that we will not be incurring, and (2) he grossly overstates the costs we expect to incur. He expects our capital costs to be $20,627,082.00.[[20]](#footnote-22) We expect them not to exceed roughly $15.2 million.[[21]](#footnote-23) The table below shows Mr. Hunter’s estimates compared to our estimates. Our estimates are based on our experience and that of our local engineering advisors.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Mr. Hunter’s**  **Cost Component** | **Mr. Hunter’s Cost Estimate** |  | **Sandersville Railroad’s Cost Component** | **Sandersville**  **Railroad’s**  **Cost Estimate** |
| 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 |
| **Total Estimated Capital Costs:** | $ 20,627,082 |  | **Total Estimated Capital Costs:** | $ 15,179,000 |

**Q. Why do you exclude the train formation costs attributed to the Project by Mr. Hunter?**

A. We exclude them because, as I noted above, they need not be incurred. First, as I explained, Heidelberg will not need a train building yard to accommodate unit trains because we will be running daily train service. Second, we will instead build an extra siding—approximately 1,000 feet long to accommodate our limited switching requirements for Heidelberg and Pittman Construction and transload operations for other shippers.

**Q. Why do you exclude the costs attributed to the Project by Mr. Hunter that will be incurred by shippers?**

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

**Q. Mr. Hunter asserts that transloading to CSXT is a better transportation option for Heidelberg than the Hanson Spur; Do you agree?**

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

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

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

**Q. Can Pittman Construction’s requirements be met by transloading from CSXT at Sparta?**

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

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

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

**Q. Mr. Hunter argues that, rather than utilizing the hanson spur, Veal Farms Transload, Revive Milling, and Southern Chips could just as easily send their products to Sparta for transloading to CSXT and that shipping by truck from Sandersville to the Hanson Quarry will add more, not fewer, trucks to the road. How do you respond?**

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

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

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

**Q. Do you believe Mr. Hunter is genuinely concerned that our Project will never provide the benefits Sandersville Railroad expects from the Project?**

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

**Q. What do think about Mr. Hunter’s concern that you will not attract the necessary capital to fund the Project?**

A. As Mr. Hunter makes clear, that concern is speculative. In his testimony he states that, “[a]lthough Sandersville has stated it will be financing the project itself, . . . the project *may* require additional funding from other sources.”[[22]](#footnote-24) His speculation has no basis in fact. Sandersville Railroad is paying for this Project, without any “investment partners and shippers, financing from a private lender, or public funding.” *Id*. at 11:22. Neither is the Sparta Hancock Development Authority providing economic support. *Id*. at 15:17-19.

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

**Q. Mr. Hunter thinks you need to prove the feasibility of the Project to show that the Project will serve a public use. Do you agree?**

A. That seems like a legal conclusion. However, as a layman, I do not agree with him that feasibility and public use are the same thing. Regarding public use, we have shown the Project will provide channels of trade and is necessary to properly accommodate our railroad business. As I understand Georgia law, the Georgia legislature has already decided this requirement is sufficient to meet the “public use” requirements of the Georgia Constitution. Mr. Hunter incorrectly, and without the requisite legal expertise, or any knowledge of our railroad, concludes the Project is not necessary for the proper accommodation of our business.[[23]](#footnote-25) For all the reasons I’ve explained, he’s wrong.

Because the Project will provide channels of trade and is necessary to properly accommodate our business, which already serves a public purpose, it has a “public use.”[[24]](#footnote-26)

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

**Q. Why, given that Mr. Hunter thinks you cannot recover your investment in the Project, would you go forward?**

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

It does not appear that Mr. Hunter has experience developing an entrepreneurial greenfield railroad development project. That may explain why he seems to think “feasibility” for railroad construction should only occur if his hypothetical investors in a project like ours would be guaranteed what he believes to be a reasonable return on their investment. Satisfaction of hypothetical investors based on Mr. Hunter’s litmus test of a reasonable return is not required, and that is not what’s going on here.

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

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

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

Like all plans, this is admittedly somewhat speculative. Unknown, unforeseen factors can disrupt the best projections. But our informed speculation is of the same sort that built most railroads in this country, except we have the added benefit of state of the art engineering, surveying, and railroad technology. The history of successful railroading, including Sandersville Railroad’s success, demonstrates conclusively that Mr. Hunter’s assertion that “[r]ail is not a ‘build it and they will come’ industry”[[25]](#footnote-27) is simply wrong.

**Q. Given that Sandersville Railroad will risk a lot of capital, should the public be worried that they will share that risk?**

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

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

**Q. Mr. Hunter seems to think that CSXT may present an obstacle to the completion of the Hanson spur. Is that consistent with your understanding?**

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

**Q. What is the role of the Spur and Sandersville Railroad's switching services in the National Railroad Network?**

A. Railroads are a regulated industry.[[26]](#footnote-28) The Federal Government agency that regulates railroads, the U.S. Surface Transportation Board (“STB”) has exclusive jurisdiction over transportation by rail that is part of the interstate rail network. The Hanson Spur will connect with that network via CSXT’s Camak subdivision.

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

**Q. Why are you explaining this to the Commission?**

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

1. the type of rates he says we will charge;[[27]](#footnote-29)
2. the nature of our operations;[[28]](#footnote-30)
3. the amount of our costs;[[29]](#footnote-31) and
4. the notion that we will not connect with CSXT.[[30]](#footnote-32)

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

Intervenors’ witness Mr. Kochan not only ignores the role our switching services will play in the national rail network, but he also advocates an entirely different meaning of “public use” from the one his published writings recognize is now the law.[[31]](#footnote-33)

Taking Mr. Hunter’s and Mr. Kochan’s misguided views together, I infer they are intended not to apply the law as written. They aim instead to support an ideological crusade by the Institute for Justice to make new federal constitutional law.[[32]](#footnote-34) The Commission does not have before it a constitutional amendment or statutory amendment. Instead, we are asking the Commission whether the proposed Spur serves a public purpose under the existing law.

**Q. Mr. Hunter seems to think THE COMMISSION is required to determine whether the Project is investible. Does that make sense to you?**

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

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

**Q. Are there any other elements of Mr. Hunter’s testimony to which you would like to respond?**

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

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

First, as a matter of personal privilege, I object to Mr. Hunter’s prejudicial inclusion of photos in the body and exhibits of his testimony that show segments of a down-at-the-heels railroad. He says these are photos of segments of CSXT railroad. I do not know where those photos were taken, but they have nothing to do with Sandersville Railroad. Our railroad is in excellent shape, and we will maintain the Hanson Spur in the same manner.

Second, our costs should not be conflated with Heidelberg’s costs, as Mr. Hunter does in his testimony.[[33]](#footnote-35) Those costs are exclusively Heidelberg’s decision and based on its internal requirements.

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

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

A. Yes.

**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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1. 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. [↑](#footnote-ref-3)
2. 2019-2020 House Resolution 37. [↑](#footnote-ref-4)
3. 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* (last accessed September 26, 2023). [↑](#footnote-ref-5)
4. *Id*. at 3. [↑](#footnote-ref-6)
5. *Id*. at 2. [↑](#footnote-ref-7)
6. *Id*. at 4. [↑](#footnote-ref-8)
7. *Id*. [↑](#footnote-ref-9)
8. *Id*. at 5-6. [↑](#footnote-ref-10)
9. *Id*. at 6 [↑](#footnote-ref-11)
10. *Id*. at 8. [↑](#footnote-ref-12)
11. 2019-2020 House Resolution 935. [↑](#footnote-ref-13)
12. 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* (last accessed September 26, 2023). [↑](#footnote-ref-14)
13. *Id*. at 5. [↑](#footnote-ref-15)
14. *Id*. at 6. [↑](#footnote-ref-16)
15. *Id*. at 7. [↑](#footnote-ref-17)
16. *Id*. at 9, *et seq*. [↑](#footnote-ref-18)
17. *Id*. at 10. [↑](#footnote-ref-19)
18. 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. [↑](#footnote-ref-20)
19. S*ee* 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. [↑](#footnote-ref-21)
20. *Id*. at Ex. 34, p. 29. [↑](#footnote-ref-22)
21. 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. [↑](#footnote-ref-23)
22. *Supra* note 19, Testimony of Gary Hunter, at 5:5-7 (emphasis added). [↑](#footnote-ref-24)
23. *Id*. at 22:1-2. [↑](#footnote-ref-25)
24. 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. [↑](#footnote-ref-26)
25. *Id*. at 12:3. [↑](#footnote-ref-27)
26. *See, e.g.,* Frank N. Wilner, Railroads & Economic Regulation (An Insider’s Account) (Simmons-Boardman Books, Inc. 2023). [↑](#footnote-ref-28)
27. *Id*. at 12:10. [↑](#footnote-ref-29)
28. *Id*. at 10:20-23, 14:19-23 [↑](#footnote-ref-30)
29. *Id*. at 10:23-11:1, 11:2-4. [↑](#footnote-ref-31)
30. *Id*. at 14:12-18. [↑](#footnote-ref-32)
31. *Supra* atn. 24. [↑](#footnote-ref-33)
32. 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-20th 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. [↑](#footnote-ref-34)
33. Testimony of Gary Hunter at 11:2-4. [↑](#footnote-ref-35)