BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

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

OBJECTIONS TO AND MOTION TO STRIKE PRE-FILED DIRECT TESTIMONY OF JEFF CUSTER

on behalf of the Property Owner Respondents

October 16, 2023

Grant E. McBride
Georgia Bar No. 109812
SMITH, WELCH, WEBB & WHITE, ATTORNEYS AT LAW
2200 Keys Ferry Court
P.O. Box 10
McDonough, GA 30253
gmcbride@smithwelchlaw.com
Tel.: 770-957-3937
Fax: 770-957-9165

Robert B. Baker
Georgia Bar No. 033881
ROBERT B. BAKER, PC
2480 Briarcliff Road, NE, Ste. 6
Atlanta, Georgia 30329
(706) 207-5002
bobby@robertbbaker.com

William R. Maurer*
Washington Bar No. 25451
INSTITUTE FOR JUSTICE
600 University Street, Ste. 1730
Seattle, WA 98101
(206) 957-1300
wmaurer@ij.org

Elizabeth L. Sanz*
California Bar No. 340538
Renée D. Flaherty*
District of Columbia Bar No. 1011453
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Ste. 900
Arlington, VA 22203
(703) 682-9320
bsanz@ij.org
rflaherty@ij.org

**Pro hac vice* applications pending

Counsel for Property Owner Respondents

"In administrative hearings, the rules of evidence as applied in the trial of nonjury civil actions shall be followed, subject to special statutory rules or agency rules as authorized by law." O.C.G.A § 24-1-2(4). Pursuant to the Georgia Code of Evidence, O.C.G.A §§ 24-1-1 *et seq.*, Property Owner Respondents[1] hereby object to and move to strike the Pre-Filed Direct Testimony of Jeff Custer, set forth below, for the reasons stated:

Page Start	**Line Start**	**Page End**	**Line End**	**Objection**
3	5	3	11	Speculation
4	16	5	6	Lack of Foundation, Speculation

Mr. Custer is the "Wood Procurement and Fiber Sales Manager with Southern Chip [sic] LLC." Test. 2:4–5. Mr. Custer's testimony describes Southern Chips' business and corporate structure, Test. 3:17–4:8, and the extent to which Sandersville "participate[s] in [Southern Chips'] day-to-day business decisions" and "instruct[s] Southern Chips to use the Hanson Spur." Test. 4:10–5:6. Mr. Custer also testifies about the alleged benefits of the Hanson Spur. Test. 4:19–5:6. Property Owner Respondents object to and move to strike Mr. Custer's testimony based on lack of foundation and speculation. Property Owner Respondents also object to Mr. Custer testifying as part of any "panel," including one consisting of Scott Dickson, Arnie Pittman, and Cale Veal. Group testimony would violate Respondents' due process rights under the U.S. and Georgia constitutions, as well as O.C.G.A. § 24-6-602, because it would prevent fair and full cross examination into the witnesses' individual and personal knowledge, experience, and bases for their opinions. Finally, Property Owner Respondents object to and move to strike the entirety of Mr.

[1] 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.

Custer's testimony on the grounds that Property Owner Respondents were not allowed to depose him before the November 27, 2023 hearing in this matter. *See* O.C.G.A. § 50-13-13(a)(6) (providing for "the taking of testimony by deposition").

Speculation

A "witness's testimony in the form of opinions or inferences shall be limited to those opinions or inferences which are [r]ationally based on the perception of the witness." O.C.G.A. § 24-7-701. Mr. Custer offers no evidence to support his assertions that the Hanson Spur would "give [Southern Chips] access to the CSX Transportation ('CSXT') rail system and allow [Southern Chips] to reach new markets for our products at a lower cost to our customers." Test. 3: 5–11. Nor does Mr. Custer provide evidence to support his assertion that "utilizing the Hanson Spur is an obvious choice to expand the market reach for Southern Chips." Test. 4:19–20. Indeed, Mr. Custer provides no evidence, such as contracts, that Southern Chips will use the Hanson Spur at all.

Lack of Foundation

"A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of such matter." O.C.G.A. § 24-6-602. Lay witness opinion testimony is admissible only if it is based on something the witness perceived, helpful for determining a fact at issue, and "not based on scientific, technical, or specialized knowledge within the scope of" O.C.G.A. § 24-7-702.

Mr. Custer offers no evidence that he is personally qualified to opine about the alleged benefits of the Hanson Spur or that he has done anything except accept, on faith, the promises of Sandersville Railroad Company, which is the only member of Southern Chips' single-member

LLC. Test. 4:6–7. Mr. Custer has not established that he is an expert on any of the topics about which he testifies.

Property Owner Respondents respectfully request that the entirety of Mr. Custer's testimony be stricken or, in the alternative, those portions described in the chart on page 2. If Mr. Custer's testimony is not stricken, Property Owner Respondents respectfully request that the Hearing Officer give such testimony little weight. Property Owner Respondents reserve all other objections to Mr. Custer's testimony pending the hearing and cross-examination.

Respectfully submitted, this 16th day of October, 2023.

Grant E. McBride
Georgia Bar No. 109812
SMITH, WELCH, WEBB & WHITE,
ATTORNEYS AT LAW
2200 Keys Ferry Court
P.O. Box 10
McDonough, GA 30253
gmcbride@smithwelchlaw.com
Tel.: 770-957-3937
Fax: 770-957-9165

/s/ Robert B. Baker
Robert B. Baker
Georgia Bar No. 033881
ROBERT B. BAKER, PC
2480 Briarcliff Road, NE, Ste. 6
Atlanta, Georgia 30329
(706) 207-5002
bobby@robertbbaker.com

/s/ William R. Maurer
William R. Maurer*
Washington Bar No. 25451
INSTITUTE FOR JUSTICE
600 University Street, Ste. 1730
Seattle, WA 98101
(206) 957-1300
wmaurer@ij.org

Elizabeth L. Sanz*
California Bar No. 340538
Renée D. Flaherty*
District of Columbia Bar No. 1011453
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Ste. 900
Arlington, VA 22203
(703) 682-9320
bsanz@ij.org
rflaherty@ij.org

Counsel for Property Owner Respondents
**Pro hac vice* applications pending

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2023, a copy of the foregoing *Objections to and Motion to Strike Pre-Filed Direct Testimony of Jeff Custer* has been served via electronic mail and U.S. First-Class Mail on the following pursuant to GA. COMP. R. & REGS. 515-16-16-.02; 515-2-1-.04(4)(b), (3):

VIA Electronic Mail and U.S. First-Class Mail:

L. Craig Dowdy
Steven L. Jones
TAYLOR ENGLISH DUMA, LLP
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339
Telephone: (770) 434-6868
Facsimile: (770) 434-7376
cdowdy@taylorenglish.com
sjones@taylorenglish.com

Robert S. Highsmith, Jr.
Laura E. Flint
HOLLAND & KNIGHT LLP
1180 West Peachtree Street NW
Suite 1800
Atlanta, Georgia 30309
Telephone: (404) 817-8500
Facsimile: (404) 881-0470
robert.highsmith@hklaw.com
laura.flint@hklaw.com

Counsel for Petitioner Sandersville Railroad Company

Robert Donald Garrett, Sr.
Sarah V. Garrett
1335 Shoals Road
Sparta, GA 31087

William Blaine Smith
Helen Diane Smith
823 Chatsworth Drive
Accokeek, MD 20607

Marvin Smith, Jr.
Patricia Smith
15500 Avery Road
Rockville, Maryland 20855

Joel Bradford Reed
Kathy Lynn Reed
5 Dogwood Lane
Chatsworth, GA 30705

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

Sally G. Wells
140 Dunn Road
Sparta, GA 31087

Donna N. Garrett
154 Lakeview Drive
Sparta, GA 31087

Verne G. Hollis
373 Hamilton Street
Sparta, GA 31087

Herus Ellison Garrett
111 Brookwood Court
Eatonton, GA 31024

Thomas Ahmad Lee
8201 Brookriver Drive, Ste 246
Dallas, TX 75247

Property Owners

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

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

Nancy Gibson
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334
Telephone: (404) 463-0882
Facsimile: (770) 342-3054
E-mail: ngibson@psc.ga.gov

Designated Hearing Officer

Sallie Tanner
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334
Telephone: (404) 656-4501
Facsimile: (404) 656-2341
E-mail: stanner@psc.ga.gov

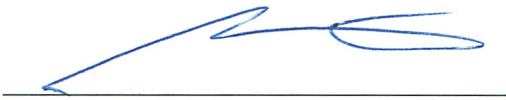
Executive Secretary of the Public Service Commission

Rob Trokey
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334
E-mail: rtrokey@psc.state.ga.us

Director, Electric Unit of the Public Service Commission

Ray-Kelle Preston
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334
E-mail: rpreston@psc.ga.gov

DATED this 16th day of October, 2023.



Grant E. McBride
Georgia Bar No. 109812
SMITH, WELCH, WEBB & WHITE,
ATTORNEYS AT LAW
2200 Keys Ferry Court
P.O. Box 10
McDonough, GA 30253
gmcbride@smithwelchlaw.com
Tel.: 770-957-3937
Fax: 770-957-9165

Counsel for Property Owner Respondents